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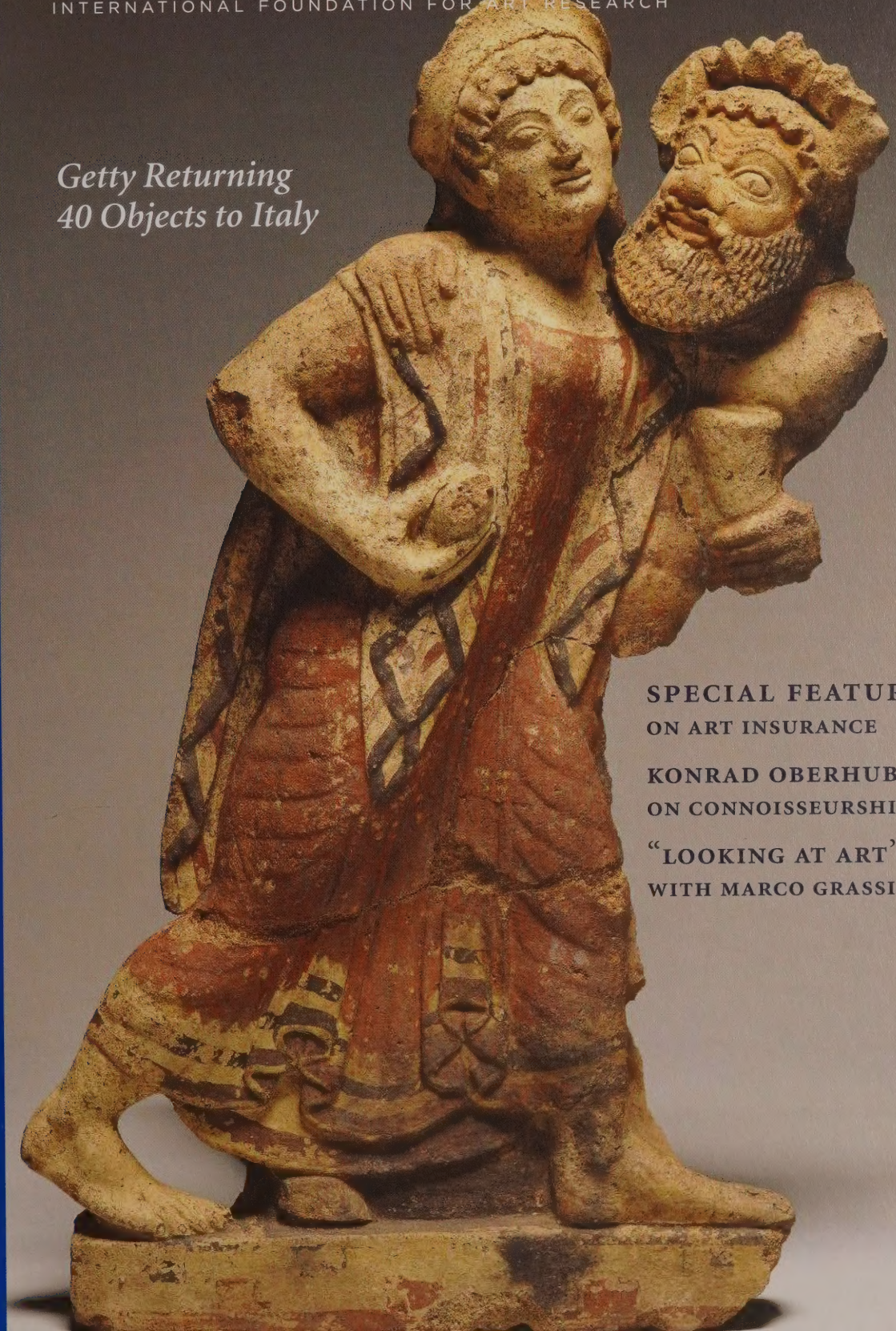

Getty Returning 40 Objects to Italy

SPECIAL FEATURE
ON ART INSURANCE

KONRAD OBERHUBER
ON CONNOISSEURSHIP

"LOOKING AT ART"
WITH MARCO GRASSI

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IFAR Journal

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Antefix in the Form of a Maenad and Silenos Dancing (Etruscan, Early 5th century BC). Terracotta. H: 54.6 x W: 32.5 x D: 16.5 cm. Acc. no. 96.AD.33. Deaccessioned. Returned by the Getty to Italy in 2007. Photo: The J. Paul Getty Museum.

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GETTY RETURNING 40 DISPUTED OBJECTS TO ITALY

THE FATE OF OTHER OBJECTS UNDECIDED
ITALY DROPS CIVIL CHARGES AGAINST MARION TRUE

The Getty Museum and Italy have settled a longstanding claim to recover objects acquired by the museum that Italy said left its country illegally in contravention of its 1939 patrimony law. The June 1939 law, #1089, vests ownership in the State of all antiquities found after that date. Under the Agreement, announced in August, the Getty said it would return 40 of the 52 objects initially claimed by Italy. But it did not admit any wrongdoing. In return, Italy agreed to lend antiquities of equivalent importance to the museum for up to four years, as it has also agreed to do with the Metropolitan Museum of Art and the Museum of Fine Arts, Boston.

The first four of the Getty objects — including a wall fresco fragment depicting Hercules and a vase often attributed to Euphronios (Figs. 1 and 2) — were sent to Italy on October 2. All but one of the remaining objects is scheduled to go back by the end of the year (Figs. 3–4 and *Journal* cover). What won't go back this year is a larger-than-life-size 5th century B.C. marble and limestone statue of Aphrodite (Fig. 5), for which the Getty paid $18 million dollars in 1988 when it purchased it from a London dealer, Robin Symes. The museum will keep it until 2010.

Italy has said it will exhibit all the returned objects for three months starting late December at the Quirinale Palace in Rome — residence of the President of Italy, after which the objects will be dispersed to as-yet-unspecified museums.

FIGURE 1. *Wall Fragment of a Mask of Hercules* (Roman, c. 3rd quarter of 1st century BC). Fresco. Returned to Italy on October 2. Photo: The J. Paul Getty Museum.

CRIMINAL TRIAL AGAINST TRUE CONTINUES

Although not a condition of the Agreement, but announced soon thereafter, Italy dropped civil charges against Marion True, the Getty's former curator of antiquities. Under the civil case, Italy was seeking monetary damages for loss of its cultural objects. Some of the objects that the Getty is returning factor in the case against True.

Criminal charges against True remain, and it is not clear what effect the Agreement will have on the case. The Getty is paying for her legal defense. She is accused of knowingly acquiring antiquities taken out of Italy illegally, but she has maintained her innocence (see *IFAR Journal*, Vol. 7, nos. 3&4). It is the first time that an American curator has been charged by a foreign government for such purchases, all of which in True's case were made on behalf of the museum

FIGURE 2. Foundry Painter and Possibly Euphronios. *Attic Red-Figure Mask Kantharos* (Greek, c.480 BC). Terracotta. Returned to Italy on October 2. Photo: The J. Paul Getty Museum.

prior to 1995. The charges are based on evidence, including thousands of photographs, found in 1995 when Italian authorities raided the Geneva warehouse of an Italian antiquities dealer, Giacomo Medici. Medici was convicted of illegal trafficking in antiquities in an expedited trial in December 2004 and sentenced to ten years in prison. His case is on appeal.

Marion True's trial, which began in Rome in 2005, is unusual by American standards: It is not a jury trial, but rather presided over by a judge and two assistant judges; the court meets only sporadically, a day or two every couple of months (most recently in September); the indictment against her was not made public; and she doesn't have to appear in court. Her co-defendant in the criminal trial is American antiquities dealer Robert Hecht, but he and True are represented by different attorneys. Recently, (See Jason Felch, the latimes.com, September 25, 2007) Paolo Ferri, the prosecutor in the criminal case, admitted that, even if convicted, neither Hecht nor True would go to jail in Italy. Hecht is 88 years old, and his age alone will prevent a jail term; while True, he noted, as an American citizen, can return home to the U.S. to avoid a prison sentence.

NEGOTIATIONS AND BREAKTHROUGH

Italy formally approached the Getty in January 2005 with ownership claims concerning 52 objects. Demands for six of the objects were later removed. Talks broke off in November 2006 when the two sides could not agree on the substance of all the claims. The Getty, under its new director, Michael Brand, then announced unilaterally that it would return 26 of the objects without an agreement. By this summer, with talks at an impasse and agreements signed between Italy and both the Metropolitan Museum of Art and the Museum of Fine Arts, Boston (See *IFAR Journal*, vol. 9, no.1), Italy stepped up the rhetoric by threatening to withhold all Italian loans to the Getty.

A breakthrough came in late summer when the most important remaining disputed object, a bronze Greek statue of a Victorious Youth, dated 300–100 B.C. (Fig. 6), which the Getty insists was found in international waters in the Adriatic Sea and refuses to cede to Italy, was taken off the table. Italy agreed to await a decision by a court in the town of Pesaro on Italy's Adriatic Coast, which is holding an investigation into the discovery of the statue by Italian fishermen in 1964. The life-size statue, still corroded and encrusted after much conservation, is one of the jewels of the Getty's collection.

FIGURE 3. *Sculptural Group (Table Support) of Two Griffins Attacking a Fallen Doe* (Greek, c.325–300 BC). Asia Minor marble with polychromy. To be returned to Italy by end of 2007. Photo: The J. Paul Getty Museum.

AGREEMENT WITH GREECE

In two separate agreements in 2006, the Getty agreed to return—and later did—four objects claimed by Greece, including a magnificent gold Funerary Wreath dating to the 4th century B.C. (Fig. 7). One of the four objects was also claimed initially by Italy, indicating, perhaps, how complicated and murky international ownership and illegal export claims can sometimes be.

—S.F.

FIGURE 4. Attrib. to the Sisyphus Group. *Apulian Red-Figure Volute Krater* (Greek, c.410-400 BC). Terracotta. To be returned to Italy by end of 2007. Photo: The J. Paul Getty Museum.

FIGURE 5. *Statue of a Goddess, generally called Aphrodite* (Greek, 425-400 BC). Limestone and Parian marble with polychromy. Legal title transferred to Italy, but staying at the Getty until 2010. Photo: The J. Paul Getty Museum.

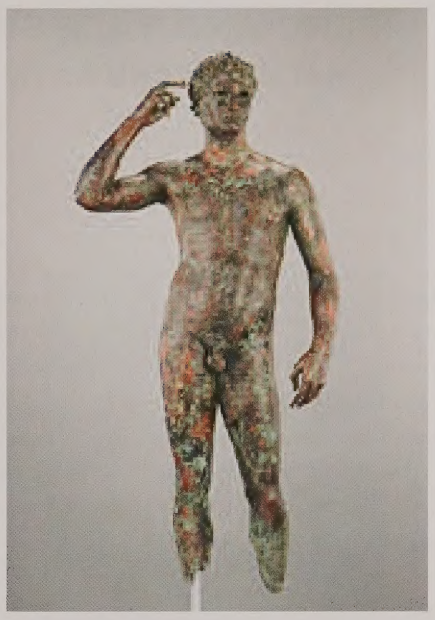

FIGURE 6. *Victorious Youth* (Greek, c.300-100 BC). Bronze, Acc. no. 77.AB.30. Not part of the Getty agreement with Italy. Photo: The J. Paul Getty Museum.

FIGURE 7. *Funerary Wreath* (Greek, c.320-300 BC). Gold with blue and green glass-paste inlays. Returned to Greece in 2007. Photo: The J. Paul Getty Museum.

PERU AND YALE SETTLE THEIR DIFFERENCES

MACHU PICCHU ARTIFACTS WILL HAVE A NEW HOME

In September 2007, an agreement was finally reached between the government of Peru and Yale University for the return of some 4,000 artifacts excavated from Machu Picchu in 1912 and 1914–15 by the Yale archaeologist Hiram Bingham III. The university will transfer legal title of all Machu Picchu objects to Peru while retaining some of the lesser-quality objects on campus for research purposes.

Under the arrangement, which stresses future collaboration between Yale and the Peruvian government, a new Museum and Research Center in the former capital of the Incan Empire, Cuzco, will be funded through a traveling exhibition. After touring, the collection, jointly curated by scholars from Yale and Peru's National Institute of Culture, will be housed in the Center for which the university will act as advisor.

The city of Machu Picchu was constructed at the height of the Incan empire in 1450 as a rural retreat for Incan royalty, and abandoned less than one hundred years later when the empire fell to Spanish forces in the early 16th century. Yale professor Bingham rediscovered the "lost city" in 1911 on an expedition sponsored by the university and National Geographic Magazine. Many of the objects excavated were stored in Yale's Peabody Museum of Natural History until 2003 when they were organized into a touring exhibition entitled "Machu Picchu: Unveiling the Mystery of the Incas," which was installed in New Haven upon its return in 2005.

The Peruvian government, in step with Italy, Greece and Egypt who have also recently taken action to reclaim antiquities from museum collections, initiated negotiations with Yale in 2003 for the return of all artifacts from Machu Picchu in Yale's possession.

The final agreement was hard-won. Peru contended that the decrees granting Bingham permission to excavate indicate that the artifacts were merely on loan to Yale: the first decree, pertaining to the 1912 expedition, reserved the right for Peru to request return of the artifacts, and the second decree, concerning the 1914–15 expedition, required that Bingham return the objects within 18 months. Yale questioned Peru's reading of the first decree. Furthermore, the university claimed that under the Peruvian Civil Code of 1852 it has held title to the artifacts ever since the moment of their excavation. However, the central issue in negotiations has been the interpretation of decrees.

By 2005, deliberations had come to a standstill and Peru stated its intention to sue for restitution of the entire collection, but discussions resumed in the summer of 2007. The resulting partnership promises not only a purpose-built Center where the artifacts will remain on permanent display near the site of the ruins, but also offers, according to the joint statement released by the two parties on September 14, an example of "a new model of international cooperation" for the ongoing protection and investigation of cultural property.

—STEPHANIE VYAS
LAW INTERN, IFAR

PRINCETON NEGOTIATES AGREEMENT WITH ITALY

Add the Princeton University Art Museum to the growing list of U.S. museums signing agreements with Italy to return objects from their collections that Italy says were taken illegally out of the country. The museum announced the Agreement as *IFAR Journal* was going to press; it was scheduled to be signed in Rome on October 30.

Under the Agreement, Princeton will transfer title to eight objects and retain title to seven objects in its antiquities collection that have been the subject of discussions with Italy for more than a year.[1] Four of the eight objects being transferred will remain at the museum, on loan, for four years. These include an Attic Greek red-figured psykter, or vessel for cooling wine, that is attributed to the Kleophrades Painter (Fig. 1).

The mushroom shaped psykter, decorated with figures drinking wine, was acquired by the museum in 1989. It was one of the first four objects that Italy inquired about in December 2004. Italian prosecutor, Paolo Ferri, told Bloomberg News some months later (cf. Vernon Silver, Bloomberg.com, October 31, 2005) that the vessel was included in their criminal indictment against art dealer Robert Hecht and could be traced back to convicted dealer, Giacomo Medici (whose conviction is now on appeal). Princeton responded to the Italian inquiry a month later with documentation regarding the acquisition. Ensuing discussions between the museum and Italy eventually encompassed fifteen works.

As part of the Agreement, and in line with what it has agreed to do with the Metropolitan Museum, the Getty, and the Museum of Fine Arts, Boston, Italy will lend the university museum works described by Princeton as having "great significance and cultural importance." Italy has also agreed to grant Princeton students "unprecedented access to excavation sites managed by the Italian ministry for the purposes of archaeological study and research."

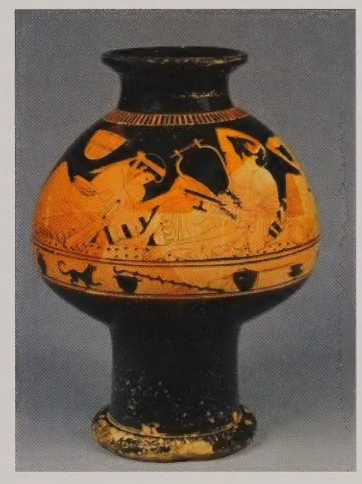

FIGURE 1. *Red Figure Pyskter*, ceramic, Greek, Attic, c. 510-500 B.C. One of 4 objects whose legal title is being transferred by the Princeton University Art Museum to Italy, but which will remain on loan to the museum.

Susan Taylor, the museum's director, made special note of this last point in her public statement about the Agreement: "We are pleased with the outcome of our negotiations . . . This agreement reflects and supports the research and educational mission of the University art museum. . . ."

—S. F.

[1] For a complete list of the 15 objects, see http://www.princeton.edu/main/news/archive/S19/34/26K47/index.xml

RECOVERY OF THREE PICASSOS STOLEN FROM ARTIST'S GRANDDAUGHTER

WHILE THIEVES STEAL FOUR PAINTINGS FROM MUSEUM IN NICE

In August, French authorities recovered two paintings and a drawing by Pablo Picasso that were stolen from the home of the artist's granddaughter in February. Three men were initially apprehended, but only two were held in custody (détension provisoire). Formal charges against them are likely to follow. The third was set free and is considered a person of interest, or more literally, a "supervised witness" (témoin assisté).

The two recovered paintings are an oil showing Picasso's daughter Maya at the age of 3, holding a doll (Fig.1) and a portrait of Picasso's second wife Jacqueline. The drawing shows Maya's mother, Marie-Thérèse Walter, Picasso's mistress, at the age of 21. The works were stolen from the Parisian home of the artist's granddaughter, Diana Widmaier-Picasso, the night of February 26th, while she slept. There was no sign of forcible entry and the works were not insured (cf. *IFAR Journal*, Vol.9, no. 2).

Police described the three men as professional criminals, 45–60 years old. They were being watched for a month prior to the arrest, ever since a Belgian art dealer tipped police off that someone had tried to sell him a bronze sculpture that had been stolen in a different Parisian theft in July. The "someone" — one of the three men apprehended in the Picasso case — was foolish enough to leave his correct name with the dealer. Police kept the man under surveillance.

Even before then, in early June, investigators from the OCBC, the French office in charge of illegal trafficking in cultural goods, learned that three men, two of whom were already well known to police, were trying to sell the stolen Picassos on the black market. The OCBC, working together with the anti-theft police unit (BRB), closed in on the thieves on August 7 when two of the suspects were spotted in Paris carrying cardboard tubes, and police feared that they were about to sell the stolen paintings. After the arrests, the police found the Picassos rolled up inside the tubes.

FIGURE 1. Picasso's *Maya with a Doll*, shown at the press conference after recovery.

The works are said to be in reasonably good condition. The *Portrait of Jacqueline* apparently has very little damage, but *Maya with a Doll* was treated more roughly. It was cut from the frame at the time of the theft and suffered additional damage — paint cracking — from being rolled too tightly in the cardboard tube.

FIGURE 2. Musée des Beaux-Arts, Jules Chéret, Nice, France

THEFT IN NICE

The same week that the Picasso theft had a happy ending in Paris, a museum in the South of France, in the city of Nice on the Riviera, suffered an unhappier fate. In a brazen daytime theft on Sunday, August 5, five armed and masked men stormed into the Musée des Beaux-Arts, Jules Chéret (Fig. 2), and got off with four paintings: an 1897 Monet, *Cliffs Near Dieppe;* Alfred Sisley's *Lane of Poplars at Moret,* dated 1890, and two 17th Century works by Jan ("Velvet") Brueghel the Elder: *Allegory of Earth* and *Allegory of Water.* The thieves tried to take a fifth work, another Sisley, but it apparently dropped on the floor and they left it. Two of the thieves escaped on motorbikes; the others by car.

The stolen works have an ill-fated history. Two of them — the Sisley and Monet— were part of a notorious 1998 theft involving the curator of the museum. He was later sentenced to five years in prison and served a year and a half. The works were found only a week after the theft, in a boat off the Riviera coast. But even that theft wasn't the first for the Sisley, which had previously been stolen in 1978. Then, too, it was recovered quickly — in a sewer in nearby Marseilles.

The security-challenged Jules Chéret Museum is a beautiful former private mansion on the seafront of Nice. It houses an impressive collection of late nineteenth century paintings, many by artists who lived or worked on the Riviera; plus assorted works by other artists, and a significant group of works by Chéret, who is often called the father of the modern color lithographic poster. He was the most important poster artist of the 19th century before Toulouse-Lautrec.

—S.F.

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LETTERS TO THE EDITOR

REMINDER

"Letters to the Editor" are welcome in *IFAR Journal.* Please keep letters brief. We reserve the right to edit for length. All letters must be signed. Please fax or mail letters to:

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POLICE FIND STOLEN *MADONNA* IN OFFICE OF GLASGOW LAWYER

Four years after it was stolen in an audacious daytime theft, the *Madonna with Yarnwinder* (Fig. 1), a painting attributed by many scholars to Leonardo da Vinci, was found in a raid of the offices of a Glasgow, Scotland attorney. The raid, on October 4, led to the arrest of the attorney, Calum Jones, 42, and three other Scotsmen. All four, including a second attorney, were charged with conspiracy to rob and extort for money and were released on bail. As *IFAR Journal* went to press, a fifth man, Mike Brown, said to run a detective agency in Glasgow, was also arrested and expected to be charged. Police continue to look for other people they believe were involved in the theft and hiding of the work. Details of the investigation and recovery are still coming to light.

An oil on panel measuring 18 ¼" x 14", the painting was part of the collection of the Duke of Buccleuch, Scotland's largest landowner, whose family had purchased it in 1756. It was exhibited in the Duke's family home, Drumlanrig Castle, which is open to the public. In August 2003, a team of four thieves, acting as tourists taking the castle tour, overpowered the guide and made off with the work. (See *IFAR Journal*, Vol.6, no.3) An alarm was activated, but by the time police arrived, the thieves had escaped into a waiting car. An international search for the painting ensued, but all along police said that they believed that the work had not left the country. The search, in its recent stages alone, Scottish police say, involved 60 officers.

FIGURE 1. Leonardo DaVinci (?) or workshop. *Madonna with Yarnwinder,* c.1501-1508. Oil on panel. 18 ¼" x 14". Stolen from Drumlanrig Castle, Thornhill, Scotland on August 27, 2003. Recovered by the Scottish police in Glasgow on October 4, 2007.

Ironically, and sadly, the painting was found one month after the Duke, who was said to be heartbroken about the theft, died at the age of 83. His family received an insurance payment, but the present Duke told reporters that the money would be repaid to the insurers, with interest, so that the family could retain full ownership of the work.

Dating from c.1501–08, the *Madonna with Yarnwinder* is one of several versions of a work painted by Leonardo expressly for the Secretary of State to King Louis Xll of France, who occupied Milan at the time. Although scholars agree that the Duke's painting dates to the time and studio of Leonardo, they have differed as to what degree Leonardo himself was involved. The attribution has gone back and forth over the years.

—S.F.

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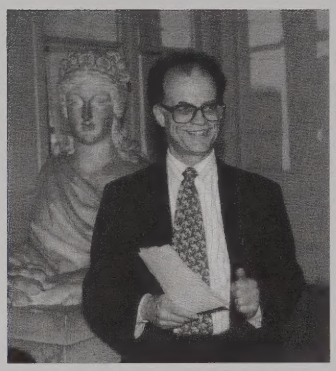
IN MEMORIAM: KONRAD J. OBERHUBER

(March 31, 1935–September 12, 2007)



SCHOLAR, CONNOISSEUR, CURATOR
MEMBER, IFAR ART ADVISORY COUNCIL, 1985–2007

WE WILL MISS YOU

When Konrad Oberhuber died in San Diego on September 12, 2007, at the age of 72, the world of art history lost one its most unique and influential voices and the International Foundation for Art Research (IFAR) a most valued member of its Art Advisory Council. Konrad's range was impressive, from the Renaissance to modern art, from painting to the graphic arts. He was the author of several volumes on Raphael, general monographs on the artist and more specialized studies on individual works, both paintings and drawings. He was responsible for important re-evaluations of the early work of Poussin and of the drawings of Titian. His stature as the major drawings connoisseur of his generation was based on the breadth of his knowledge, which covered the entire history of the European tradition, and on its depth, for he knew drawing in all its technical detail. As important and influential was his role in establishing the modern appreciation of prints as works of art; this he accomplished through his curatorial activity at several museums, although his name was most intimately connected with the Albertina.

Born in Linz, Austria, on March 31, 1935, Konrad became familiar with the United States as a young student; on a Fulbright Scholarship he spent a year (1951–1952) at Mishawaka, Indiana, High School. He studied art history, psychology, and philosophy at the University of Vienna, from which he received his Ph.D. in 1959. In 1961 he began a decade-long curatorial career at the Graphische Sammlung Albertina. This was followed by his appointment as research curator at the National Gallery of Art in Washington; it was during this period that he provided the inspiration and guidance for one of the most significant exhibitions ever devoted to early Italian engravings (1973), the catalogue of which remains a standard reference in the field. In 1975 he became curator of drawings and professor of fine arts at the Fogg Art Museum of Harvard, being named Ian Woodner Curator in 1984. Finally, and appropriately, his career came full circle in 1987 with his return to Vienna as director of the Albertina — with an academic coda as guest professor at International Christian University in Tokyo (2000–2002).

Such a dry rehearsal of his curriculum vitae hardly does justice to Konrad's achievement and his impact on the field. As a teacher, to colleagues as well as to students, he generously shared his vast knowledge, sitting with patience and pleasure as he reviewed the arguments for (or against) an attribution or a date; he demonstrated that style is content. Those who were privileged to have attended any of his lectures will recall the enthusiasm with which he made those arguments in public, theatrically re-enacting the gestures of the draftsman — what some of us came to refer to as the choreography of connoisseurship. Konrad had what in the Renaissance would have been recognized as *eloquenza corporale.* It was fitting that his last professional performances, with his wife, Victoria Martino, did indeed involve the visual arts with music and dance.

—DAVID ROSAND
Member, IFAR Art Advisory Council
Meyer Schapiro Professor of Art History, Columbia University

EDITOR'S NOTE:

In January 2007, Konrad Oberhuber agreed to write an article on connoisseurship for the IFAR Journal. Within weeks, he became ill with the cancer that took his life. The following article dated February 2007 was found after he died. Although incomplete and still in draft form, the points are clear and cogent and, as it is the last work written by a renowned scholar, we wanted to bring it to a wider audience.

CONNOISSEURSHIP AND THE CATALOGUE RAISONNÉ

POUSSIN, REMBRANDT, AND RAPHAEL

KONRAD J. OBERHUBER*

"The King's Drawings from the Musée du Louvre," a show at the High Museum of Art's "Louvre Atlanta" (October 2006–January 2007), contained as one of its highlights three landscape drawings (nos. 84, 85, 86) by Nicolas Poussin from the famous collection of Pierre Jean Mariette, who had bought them in 1741 from that of Pierre Crozat. They are excluded from *Nicolas Poussin 1594-1665: Catalogue raisonné des dessins* by Pierre Rosenberg and Louis Antoine Prat, Milano 1994, but included in the *Inventaire general des dessins, École française. XIII, De Pagnest à Puvis de Chavannes,* directed by Catherine Legrand, with entries by Jean-François Mejanes, Paris, Musée du Louvre, 1997. The drawings were always regarded as outstanding examples of landscape sketches from nature, equal to those of Claude Lorrain, and were, in fact, bought by Crozat from Everard Jabach, who had acquired them from Poussin's contemporaries Jacques Stella or Corlo degli Occhiali. They are as good as documented as being by Poussin, and nothing in the quality or in the style justifies their dismissal from the oeuvre catalogue by Pierre Rosenberg. They illustrate, in fact, the problem of the catalogue raisonné of illustrious artists of the past, characterized by a personal critical attitude of an outstanding connoisseur of what the ideal image of that artist might be.

A case in point is Raphael, whose traditional drawn and even painted oeuvre was greatly reduced by scholars of the late nineteenth and early twentieth centuries. It took the efforts of scholarship of the later twentieth century to reestablish the nearly full extent of his work. A similar process is presently going on in Rembrandt research, with devastating results. While in the case of Raphael, most of the drawings and paintings were in public collections and their change of value mattered little, in Rembrandt's case there is still a good number of works in private collections and on the market, with resulting uncertainties. In all of these cases, drawings and paintings by the master are given to the pupils or to followers out of a lack of understanding of their quality, of their function, and of their date. In many instances, the drawings or paintings were dated wrongly, did therefore not fit into the artist's oeuvre at that particular time, and were then given to the pupil, who imitated that work by the master often at a later date. Whole groups of drawings were given to pupils simply on the basis of their technique, which was considered inappropriate for the master, or of a function wrongly understood.

As noted in the article in the *IFAR Journal* (Vol. 9, no. 1) by Henry Adams on Thomas Hart Benton fakes, the cataloguer needs not only to have a good sense of the artist's general styles, but also to know his intimate development and what he can do in different phases of his career, in order not to disattribute a work. Phrases like: "He never did use this technique"; "This is too perfect for him," "He does not treat this subject matter"; are invariably leading to mistakes, unless paired with a perfect knowledge of the artist's full output. The great master is unpredictable, even though always consistent. The criterion for quality, "the maximum of variety in the maximum of unity" applies for the whole oeuvre.

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LOOKING AT ART: THE CONSERVATOR'S VIEW*

A Brief Primer on the Lining of Paintings on Canvas

MARCO GRASSI**

Since early in the sixteenth century, the preferred and most common support chosen by Western artists for painting has been canvas. Linen, jute, hemp, cotton, or combinations of these fibers — woven in a great variety of weights and pattern and referred to generically as 'canvas' — constitute the starting point for much of our artistic patrimony. As a result, the maintenance of canvas supports has been a principal preoccupation of paintings conservation practice since at least the mid-eighteenth century. One of the earliest and still most commonly used procedures for this maintenance has been the so-called 'lining' process (often mistakenly called 're-lining').

What is 'lining'— (or re-lining)?

The simplest and most straightforward definition of 'lining' is: the addition of a second layer of canvas to the rear of a painted canvas — this painted canvas being the 'primary', or 'original' support, and the 'lining' canvas, the 'secondary' support. The application of the 'lining' is almost invariably accomplished by an adhesive which binds the two canvasses together.

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Why are paintings on canvas 'lined'?

By the early eighteenth century, it became clear that many existing paintings on canvas, some—by then—almost two centuries old, were deteriorating: the primary canvas supports no longer possessed those qualities of strength, resilience and structural cohesion sufficient to assure continued stability of the painted surfaces.

What are the causes and effects of canvas deterioration?

Changes in ambient relative humidity conditions are the principal causes of canvas deterioration. In excessively dry environments, canvas tends to become brittle and fragile. By contrast, when the relative humidity conditions exceed 70-80% for prolonged periods, microorganisms can destroy a fiber's organic components. Moreover, frequent dry-humid fluctuations can greatly increase the deterioration's progress. Inevitably, problems develop in the painted surfaces: failing adhesion, cracking and blistering; all leading to loss of color.

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* This is the second article in IFAR's new *Journal* series, "Looking at Art" —answers and insights from the experts—conservators, connoisseurs, scholars—to a range of questions about caring for and understanding works of art.

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How do 'linings' correct canvas deterioration?

By substituting a new, secondary, support for the deteriorated and unstable primary support, a 'lining', in effect, prolongs the life of a painting's support structure, and thus assures the continued conservation of the pictorial layers. The new canvas, if correctly prepared, will allow the 'lined' painting to regain a proper tension on its stretcher and to maintain a uniformly planar surface.

How are 'linings' performed?

The earliest linings that have survived were very simple procedures: the original canvas would be removed from its stretcher and the new canvas simply applied at the rear with little or no prior preparation of either the original or the 'lining' canvas. Heat and pressure were also sparingly, if at all, employed in the process. As a result, such early 'linings', while not particularly long-lived, only minimally affected the painted surfaces; in this sense, these procedures can be described as very 'gentle' — in contrast to the more vigorous interventions that were introduced in most of Europe (particularly England) towards the middle of the nineteenth century. These later procedures sought to obtain more lasting results, primarily by the careful preparation of both the primary and secondary canvasses and by the use of stronger adhesives and prolonged application of pressure and heat (normally with heavy coal or electric irons). The 'lining' canvas was generally very carefully washed and pre-stretched, while the back of the original canvas would be vigorously scraped and sanded so as to render it more pliable and porous. Invariably, the actual procedure would be performed on a large, hard surface, 'face-down'.

What adhesives are used in 'linings'?

From the very beginning and until the mid-twentieth century, virtually the only adhesive universally used in 'linings' was the water-soluble glue obtained from animal skins. Its properties had been known in Europe since early medieval times, possibly earlier, and its use was widespread in everything from furniture making, to panel painting, to wood sculpture. Diluted solutions of this, or similar, glues, were also an integral part of the preparation process for the canvasses to be painted; as a result, the glue-based adhesive of the 'lining' was fully 'compatible' with the glue already present in the canvas at hand. Hide glue, however, was never the only ingredient for the 'lining' process; it would, by itself, have become too brittle and unstable. In order to create an adhesive with more 'body', the glue would be 'cooked' with wheat flour until the mixture became a dense, paste-like substance. Other ingredients, such as 'Venice turpentine', molasses, 'gum Elemi', might find their way into the preparation with a view to improving the adhesive's stability, flexibility and resistance to humidity — indeed, countless formulas are recorded in the work books and manuals of nineteenth century restorers. 'Glue-paste' formulations are still widely and effectively used today for routine 'linings' in conservation studios throughout the world.

"A 'lining', in effect, prolongs the life of a painting's support structure . . ."

However, since the 1930's, a number of other adhesives and procedures have been developed. One that has found very wide application, particularly in the United States, is a thermoplastic mixture of beeswax, resin and synthetic (microcellular) wax, generally having a melting point of ca.150° F. Another, developed here in the 1960's, is a proprietary synthetic resin formula normally referred to as BEVA. Also a thermoplastic substance, it is available with a variety of characteristics and melting points. Both beeswax-based adhesives and BEVA remain soluble in mineral spirits and are easily 'reversible' with heat.

How have 'lining' methods changed?

Recognizing that traditional paste 'linings' could — and often would — result in support structures that were overly rigid, flat and lifeless, conservators have variously modified the method of application and adhesion of secondary canvasses; particularly as regards the weight and heat employed in the process. As a result, even traditional 'glue-paste linings'

"Even the sturdiest and most carefully executed 'linings' will, in time, show signs of deterioration . . . Removing an old lining can be a tedious, mechanical process but seldom poses a danger to the original pictorial layers."

are now performed with far greater concern for the amount of heat and pressure applied in the process. Softer work surfaces are used, as well as shorter treatment durations.

At about the same time as resin and wax-based thermoplastic adhesives were being introduced, technicians in England and Germany began experimenting with electrically heated metal surfaces that could serve in the 'lining' process. Covering such surfaces with a thin, flexible membrane of rubber or celluloid, a 'holding' vacuum could be created between the painted original (placed 'face-up') and the 'lining' canvas below. The two would then be bound together by heating the adhesive to its melting point. The bond became permanent once the temperature was reduced. This technique — now known as 'hot-table' or 'vacuum-table lining' — was seen as having several significant advantages. Most importantly, the flexible 'holding' membrane would not adversely affect paintings whose surfaces had pronounced relief or 'impasto' — it would simply follow the texture configuration. Another perceived advantage of wax and resin-based adhesives was their water resistance; they are, unlike hygroscopic glue-paste mixtures, impervious to changes in ambient relative humidity.

What is 'cold lining'?

In order to treat certain — mostly contemporary — paintings on canvas whose components are heat-sensitive, 'cold linings' have more recently been developed. These rely on 'contact adhesive' resin films that are simply pressed between the primary and secondary supports. Such procedures do little except reinforce the support structure and, in many cases, have proved to be of short-lived duration. When removed, however, these 'linings' leave little or no trace on the original canvas.

Can 'linings' be removed?

Even the sturdiest and most carefully executed 'linings' will, in time, show signs of deterioration; the adhesives may lose their grip, and the secondary canvasses, their flexibility and tensile strength. Removing an old lining can be a tedious, mechanical process but seldom poses a danger to the original pictorial layers. Glue-paste 'linings' invariably remain water-soluble, even after centuries; similarly, wax-resin mixtures retain their original melting points indefinitely. Both procedures are, therefore, 'reversible'. It is interesting to note that uncovering the rear of the original support can sometimes yield surprising and, occasionally, very significant information. Not only did artists occasionally inscribe signatures or dedications on the backs of their paintings, but early collectors often placed inventory numbers or personal insignia there as well.

"In order to treat certain—mostly contemporary—paintings on canvas whose components are heat-sensitive, 'cold linings' have more recently been developed."

Is 'lining' necessary?

There can be little doubt that, had not a great number of paintings on canvas been 'lined', they would certainly not have survived. The often shoddy quality of canvas chosen by artists and/or the conditions of complete neglect in which paintings languished — sometimes for centuries — made 'lining' the only viable intervention to arrest total deterioration. It is equally certain that the process became, for more than a century (beginning ca. 1850) an almost automatic step in the conservation of paintings on canvas. Many workshops, in London and on the Continent, performed nothing but 'linings'.

FIGURE 1. (left) Federico Barocci, *St. Francis,* c.1600-1605. Oil on canvas, 35 ⅜" x 30 ⅞"; with added strips 35 ⅞" x 31 ⅜". The Metropolitan Museum of Art. Purchase, Lila Acheson Wallace Gift and 2002 Benefit Fund, 2003 (2003.281). Still in an 'un-lined' state, this painting retains every trace of the artist's handiwork. Photo © The Metropolitan Museum of Art.

FIGURE 2. (right) Guido Reni, *Charity.* Oil on canvas, 54" x 41 ¾". The Metropolitan Museum of Art. Gift of Mr. and Mrs. Charles Wrightsman, 1974 (1974.348). Although this work was painted only about 50 years after the Barocci (Fig. 1), at least one 'lining' has rendered it difficult to recognize the artist's brushstrokes. Photo © The Metropolitan Museum of Art.

During the last fifty years — at first tentatively and then with ever greater conviction — conservators have found reasons to avoid 'lining' altogether. Moreover, justified criticism has emerged concerning some decidedly negative effects, on original supports, of wax-resin impregnation.

Certain 'experimental' techniques (developed in the 1940's and 50's) introducing, as secondary supports, anomalous materials such as aluminum, fiberglass and the like, proved to be particularly pernicious.

What is 'strip lining'?

It has become increasingly clear that, to assure their continued conservation, original canvasses respond perfectly well to treatments, other than 'lining'. The careful infusion of efficient and reversible consolidants is only one of these procedures. Once completed, new canvas strips can easily be added to the tacking edges of the original support so as to allow proper re-stretching. 'Strip-lining' is, today, considered the most prudent and least traumatic method of intervention on painted canvasses.

What effects can 'lining' have on a painting's appearance?

Despite the above comments — and in particular circumstances — a 'lining', judiciously executed, with proper materials and correct methodology, is still an effective and valuable procedure. Moreover, it can assure a painting's future without altering its aesthetic

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characteristics; ample evidence for this exists in examples both from the past as well as the present. All too often, however, the procedure—no matter what materials or methods employed—has resulted in a long list of deplorable, and irreversible, damages; the flattening of painterly texture being the most visible and most negative of these.

"The issue remains: to line or not to line."

What effects can 'lining' have on a painting's value?

Paintings on canvas, dating to before 1700, that have remained 'un-lined' are exceedingly rare. Not only do they serve as precious references for the study of antique materials and techniques but they are invariably valued at substantial premiums. Indeed, it is fair to say that the market prizes highly any painting on canvas that has not been lined.

Is there controversy among conservators over 'lining'?

Since conservation is not a science—much less an 'exact science'—debate will never cease on the techniques in use and their relative merits. Also, and more importantly, the issue remains: to line or not to line. At all events, the owner or custodian of a work on canvas should always be alert to the signs of deterioration in the painting's support structure. Careful visual inspection from the front will generally reveal the first signs: waves or bumps on the surface; cracking and incipient flaking of the painted layers, actual loss of color, often in tiny fragments. Inspection of the rear will tell the rest of the story: condition of the canvas weave, presence of mold or parasite activity, efficiency of the stretcher, strength of the tacking edges. Once one or more such 'symptoms' are detected, seeking the advice of an experienced conservator is essential. As with other professions, 'second opinions' can be invaluable. 'Lining', even if judiciously and expertly performed, remains a relatively invasive procedure that may produce significant effects on a painting's inherent character, appearance, and value.

An interesting and revealing example of this is easily at hand in the Metropolitan Museum, in its Italian Baroque Paintings Gallery. Facing each other across the great hall are two highly important examples of this school: a recently acquired *St. Francis* by Federico Barocci (Fig. 1), and *Charity* by Guido Reni (Fig. 2). The paintings were executed only about fifty years apart. The older of the two, the Barocci, has miraculously come down to us from the early seventeenth century in its pristine, 'un-lined' state, whereas with the Reni, time has weighed rather more heavily. This splendid, otherwise immaculately preserved painting, underwent at least one 'lining', probably in France, during the latter years of the nineteenth century. Even at close range it is difficult today to recognize barely a hint of Reni's brushwork, that intricate 'handwriting' which normally transforms the surfaces of his paintings into such brilliant textural patterns. Barocci's *St. Francis,* by contrast, retains vividly evident every last trace of the artist's tools and his use of them.

Conclusions

In the almost two centuries during which paintings on canvas have been 'lined', there has been a progression from the 'lightness' and simplicity of the early interventions to ever more vigorous and intrusive procedures. This was complicated during the twentieth century by the introduction of materials—particularly wax—which have proven to be not compatible with the traditional support structures of most paintings.

One might well observe that the pendulum has, more recently, swung back to the notion that 'less is more' as far as lining is concerned. In fact, most conservators today, if they 'line' at all, are doing so with materials based essentially on the natural, hygroscopic glues of the past and with methods that exert a minimum of energy. As a rule, a 'lining' should be performed on a previously 'unlined' painting only after all other possible options have been considered.

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PATRIMONY AND MUSEUM POLITICS IN THE 19th CENTURY: THE LOUVRE'S GALERIE ESPAGNOLE

ALISA LUXENBERG*

Few topics within the museum field have elicited more discourse recently than the notion of art as patrimony, or cultural property.[1] These discussions seek answers to fundamental questions, such as: whether art and, if so, what type of art, can be considered the property of a people or nation; who has the right to define and control this art; and, who benefits from (possessing) it? To that end, it is instructive, indeed, imperative, to study historical examples. The Galerie Espagnole, a short-lived nineteenth-century public art museum, provides an opportunity to examine emerging definitions of art as public property, the need for transparency in public art museums, and the impact of politics on museum collecting, all of which continue to be concerns in contemporary museum practice and philosophy.

"Secrecy was necessary because Spanish law prohibited the exportation of Spanish Old Master art."

The Galerie Espagnole, or Spanish Gallery, was a collection of more than 400 Spanish (or purportedly Spanish) paintings housed within the Louvre from January 1838 through the end of 1848 (Fig. 1). It was the largest and most accessible collection of Spanish paintings known in nineteenth-century France. Created during a brief two-year span and sponsored by the French crown, this (unintentionally) ephemeral museum was part of a broader agenda to create public art museums in France. Acquisition of the works for the Galerie was facilitated by a civil war and socioeconomic reforms in Spain and spurred on by French foreign policy. Yet, the fundamentally political nature underlying the museum's creation has long been ignored or overlooked by scholars, who typically interpret the Galerie Espagnole as a reflection of the

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1 The term "patrimony" (*patrimoine* in French) that emerged with the new 19th-century discourse on this subject was rooted in the legal notion of a masculine heritage (from *pater*, Latin for "father").

FIGURE 1. Bartolomé Esteban Murillo, *St. Roderick*, c. 1646–55. Oil on canvas, 206.5 x 124 cm. Dresden, Staatliche Kunstsammlungen. Between 1838 and 1848, this painting was part of the collection of the Galerie Espagnole in Paris. Photo © Staatliche Kunstsammlungen Dresden.

new aesthetic tastes that catalyzed the transgressive style of French Realism manifested in the art of Courbet, Manet, Bonnat and others.

First, a brief summary of what is known of the Galerie Espagnole. From November 1835 through September 1837, the French king Louis-Philippe (ruled 1830-1848) financed a secret mission to Spain to acquire paintings. With one million francs at their disposal, his agents amassed hundreds of works, mostly by long-deceased artists, and exported them to France. Secrecy was necessary because Spanish law prohibited the exportation of Spanish Old Master art.[2] Given the precautions that they took and the letters that they wrote in Spain, it is clear that the French agents recognized the illegality of their actions.

The Galerie Espagnole was anomalous for its time. Other French and European public art museums — and there were not that many — had been formed around royal art collections that were developed over centuries, and none were devoted to a single school of painting. The Galerie Espagnole, moreover, was not part of an ongoing acquisitions policy at the Louvre; no pictures were added to fill lacunae after it opened.[3] The strangeness of the rapid, one-time collecting spree that formed the Galerie was obscured by the fact that the Louvre, which aspired to be an encyclopedic art museum, had, in 1835, only a handful of Spanish Old Master paintings, which the new collection decisively augmented.[4] But the dispatch with which this new collection was created also speaks of its secret, illegal nature and its role in the government plan to make a political statement by also opening several other new museums within the Louvre and at Versailles, thereby impressing French and international audiences.

Unlike the Louvre, whose development left a paper trail in French government archives, the Galerie Espagnole seems to have produced no official documentation or public statements about its conception or opening. The French press filled the void, but discrepancies in its accounts suggest that journalists did not have access to any one official source of information. Many previews — and leaks — were given to the media to stimulate

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[2] The export law affecting works by Old Masters was first decreed in 1779, re-stated in 1801, re-issued in 1810 under the French occupier Joseph Bonaparte, and reaffirmed in 1836. It remained perfectly legal to export contemporary Spanish art. The decree of 5 October 1779 has no title; its first line can be roughly translated as "In order to impede, from this day forward, painting by the hands of artists who are no longer living from being taken out of the kingdom to foreign lands, …"

[3] The Standish bequest of 1842, which contained many Spanish works of art and was hung in the Louvre in rooms contiguous to those of the Galerie Espagnole, was a one-time private donation by an Englishman, Frank Hall Standish, to the French king. It, too, was not part of an acquisitions policy at the Louvre. Like the works from the Galerie Espagnole, it went to auction in London in 1853, although in a separate sale.

4 Many Spanish paintings entered France as a result of the Napoleonic invasion of Spain in 1808. In 1813, for example, fifty Spanish paintings were sent to Paris by command of Napoleon Bonaparte whose brother Joseph was then king of Spain. But these were restituted to the Spanish government after Napoleon's defeat in 1815. See Jeaninne Baticle and Cristina Marinas, *La Galerie Espagnole de Louis-Philippe au Louvre, 1838-1848*, (Paris: Réunion des musées nationaux and La Documentation française, 1981), p. 14, fn. 2.

FIGURE 2. Federico de Madrazo, *Portrait of the Baron Taylor*, 1838. Oil on canvas, 61 x 50 cm. Versailles. Photo © Musée national/Art Resource, NY.

interest in the new museum, which received extensive attention for more than a year.

The Galerie Espagnole closed on January 1, 1849, ten years after it opened and almost a year after Louis-Philippe's abdication in February 1848. The December 1848 election of Louis-Napoléon as president of the new Second Republic (1848–1852) was the likely impetus for the closure, after which Louis-Philippe's claim to ownership of the museum was granted. He died in exile in England, however, in August 1850, before the paintings arrived. The Galerie Espagnole was seen intact for the last time in May 1853 in London when the paintings were sold at auction.

SECRECY AND TRANSPARENCY

To be successful, a public art museum requires a degree of public trust. If, as has been said, a museum's "ability to function effectively depends heavily on the confidence it can inspire in its integrity," [5] the Galerie Espagnole had a shaky start. It was a new collection, formed in secrecy and in haste, without a mission statement, by a temporary organizer, who, in letters, repeatedly announced that his primary obligation was to serve the king and bring glory to France. Like most early art museum officials, the organizers of the Galerie Espagnole had little oversight and no code of professional conduct or ethics.

"Not only did the organizers of the Galerie Espagnole refuse transparency, some among them reconfigured the museum's history not long after it opened."

The lack of institutional transparency was manifest in the authority given to Baron Taylor (Isidore-Séverin-Justin; 1789-1879) (Fig. 2), the lead agent of the secret mission to acquire Spanish paintings. Chief administrator of the Comédie Française and publisher of the highly acclaimed illustrated travelogue, *Voyages pittoresques dans l'ancienne France*, Taylor was likely chosen not for artistic expertise but for his royalist sympathies, service in the French military intervention in Spain of 1823, and participation in an earlier royal mission to obtain an ancient Egyptian obelisk from Luxor that was re-erected — and still stands — on the Place de la Concorde in Paris. In Spain, Taylor was required to obtain receipts for his expenditures, but otherwise he selected paintings for the new museum with considerable if not complete autonomy.

The primary function of French art museums, as set out in the mission statements for the Louvre, was the aesthetic enlightenment of their public, but numerous reviewers

[5] Marie C. Malaro, *Museum Governance: Mission, Ethics, Policy* (Washington and London: Smithsonian, 1994), p. 35. Ms. Malaro, p. 145, cites the International Council of Museums' November 1986 Code of Professional Ethics Section 5.1: ". . . museums are the object of a public trust whose value to the community is in direct proportion to the quality of service rendered; and, secondly, that intellectual ability and professional knowledge are not, in themselves, sufficient but must be inspired by a high standard of ethical conduct."

FIGURES 3A AND 3B. A. Bovy, *Louis-Philippe*, recto, and *Expansion of the Palace of Fine Arts* verso, bronze medal, 1839-40. Paris: La Monnaie. Photo © La Monnaie, Paris.

complained of the questionable quality and attributions of many of the Galerie Espagnole's paintings. Several commentators recommended pruning the display to include only authentic, high quality originals, as the misattributions risked hindering the museum's didactic function. The most hostile critic, the painter Alexandre-Gabriel Decamps (1803–1860) — writing in newspapers opposed to the regime, it should be noted — linked the poor quality of the museum's paintings to its organizers' lack of ethics, while more favorable commentators excused it as a necessary evil in a large collection. Although Taylor came under pointed attack for his perceived lack of competence, it is important to remember that both museums and curating were in their infancy, and curatorial training *per se* did not yet exist. A more fundamental problem was that Taylor was accountable only to the king, who, in this case, was not accountable to anyone, and no Louvre curator intervened to weed out the poor quality pictures or edit the catalogue.

Not only did the organizers of the Galerie Espagnole refuse transparency, some among them reconfigured the museum's history not long after it opened. In this regard, a medal (Figs. 3A & B), designed in 1839 for the official mint in Paris, is significant. The recto honors the king, while the verso appears to celebrate the king's preference for Spanish art. In the foreground, Louis-Philippe gestures toward the female figure personifying Spanish painting; she wears a mantilla, holds rosary beads and a palette, and stands in front of a chair inscribed with names of Spanish Old Masters

"Some Spanish clerics preferred to sell at whatever price to opportunists like Taylor, rather than allow the Spanish government to appropriate their art for free."

FIGURE 4. East colonnade, Louvre museum. The Galerie Espagnole was located on the second floor.

FIGURE 5. Verso of Figure 1, Murillo, *St. Roderick*. The number 206 in black paint on the stretcher is the inventory number of the Galerie Espagnole; the reddish number, 704, is a catalogue number from the Dresden Museum. Photo © Staatliche Kunstsammlungen Dresden.

— Velasquez, Murillo, and others. While the medal's inscription, "Royal Munificence for the Expansion of the Home of the Fine Arts" seems to commemorate the Spanish Gallery within the broader government program to expand the Louvre and create a history museum at Versailles, the accompanying date of 1834 implies that the Galerie Espagnole was opened or conceived in that year. But the secret mission to Spain to acquire the collection did not begin until autumn 1835. More importantly, 1834 also *predates* two Spanish government programs that caused many valuable paintings to leave their original Spanish sites and spurred the French to form the Galerie Espagnole.

Implemented in the summer of 1835, these radical twin programs, *exclaustración* and *desamortización*, closed down many monasteries, convents, and religious communities in Spain and appropriated their lands, buildings, and valuable objects, some of which were then sold or used to generate revenue to pay off the crushing national debt. Some Spanish clerics preferred to sell at whatever price to opportunists like Taylor, rather than allow the Spanish government to appropriate their art for free. To thwart their efforts, the Spanish government implemented a new term, *bienes nacionales* (national property), to make their claim to ownership of these former Church holdings, and planned to open public art museums in Madrid as well as in the provinces with the art taken from these sites. Thus, the medal's subject, inscription, and dating obscure the French organizers' exploitation of political turmoil, government reform, and financial hardship in Spain to build the Galerie's collection.

THE GALERIE ESPAGNOLE AS PATRIMONY

Even before it opened behind the Louvre's east colonnade (Fig. 4), the Galerie Espagnole was defined in the media as part of French cultural heritage. In an essay on Taylor's acquisition of Spanish paintings, Achille Jubinal, for example, applauded Louis-Philippe for having "conceived of the project to enrich our museum with a collection of Spanish paintings . . . [he] had the noble thought of closing a big gap in . . . the

"This document was not made public, and it was only much later, when Louis-Philippe, from exile, demanded that the paintings be returned to him, that the notion of the Galerie Espagnole as cultural heritage was betrayed."

Louvre." [6] In that same year, several journalists such as E.B. similarly described the Spanish Gallery as "[the king's] act of glorious magnificence in having thought to endow the country with these beautiful things." [7] This public understanding of the Galerie Espagnole as artistic patrimony was allowed to stand until Louis-Philippe's demand for the return of the paintings was met.

The very fact that the paintings were installed in the Louvre, the *national* art museum, which belonged to French citizens, not to the Crown, led most Frenchmen to assume that the collection belonged to the nation and that the new museum was artistic patrimony. [8] There is, in fact, some evidence to indicate that the king's initial intention was to bequeath the Galerie Espagnole to the Louvre (Fig. 5).[9]

But late in September 1838, nearly nine months after the Galerie Espagnole opened, Louis-Philippe signed an inventory of the museum's holdings that claimed everything to be his private property. [10] This document was not made public, and it was only much later, when Louis-Philippe, from exile, demanded that the paintings be returned to him, that the notion of the Galerie Espagnole as cultural heritage was betrayed. No other deposed European ruler, then or now, recovered art works that had already entered a public museum. When the paintings were auctioned off by his estate three years later, their dispersal at auction contradicted the primary rationale given for the Galerie's creation: to preserve and protect Old Master Spanish painting.

FIGURE 6. Anonymous, *Napoleon Bonaparte Showing the Apollo Belvedere to His Deputies*, etching with aquatint. Paris, Bibliothèque Nationale. Photo © Bibliothèque Nationale, Paris.

Several justifications given in 1837–38 for the creation of the Galerie Espagnole resonate with current museological debates, such as those surrounding the Elgin Marbles. Three of the most frequently cited justifications were:

- Spain's apathy for, or ignorance of, its artistic treasures;
- Spain's political instability and violence, which jeopardized the condition or very existence of its art; and,
- superior French ability to care for the art, assuring its preservation for future generations.

These claims implied that the Spanish did not deserve to retain their native art. Critics supportive of the new museum, like Jubinal, dramatized the risks to both the art and the French agents who acquired it in Spain:

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6 *Notice sur M. le baron Taylor et sur les tableaux espagnols achetés par lui d'après les ordres du roi* (Paris: Crapelet, 1837), p. 17.

7 E.B. [Eugène Briffault], "Musée espagnol," *Le Temps*, 19 May 1837.

8 While de-accessioning and temporary loans are common (though, in the case of the former, still controversial) practices in museums today, this was not true in the 19th century. The Louvre's goals were and still are to preserve its collections permanently for the education and pleasure of the French public.

9 Matthias Weniger has discovered, in the Dresden museum where he serves as curator, that several paintings formerly in the Galerie Espagnole have on their stretchers the customary numbers in black paint that the Louvre administrators gave to its new acquisitions. Such numbering would indicate that the paintings belonged to the Louvre. Even more telling, the Spanish Gallery canvases lack the personal seal of the king that he used to distinguish his private property. According to Weniger, "The Dresden Remains of the Galerie Espagnole: A Fresh Look (at the) Back," in Gary Tinterow *et al.*, *Manet/Velázquez: The French Taste for Spanish Painting*, exhibition catalogue, New York, Metropolitan Museum of Art, 2003, p. 346, other numbers in black chalk are those from the Galerie Espagnole catalogue and those in white chalk are from the 1853 auction catalogue.

10 Archives Nationales de France, O4* 2841.

> Grabbed during the pillaging by the people, these masterpieces, hidden under the dust of the cloisters, still had to face the bandits' sword before crossing the Pyrenees, and in the gorges of the Navarre, the brutality of the mountain people was able to destroy that which fire had spared. A lone fact will show to what extent Baron Taylor had to take infinite care to preserve the treasures that he had harvested from the troubles of war, and will help one to imagine what dangers threatened his life and his liberty. [11]

Such imagery, which seemed to make the Galerie just compensation for the French efforts, also continued a tradition of cultural stereotyping in which the French represented themselves as braver and more civilized and educated than the Spanish, who were cast as barbaric, irrational, and ungenerous. Where better to manifest cultural superiority than in a specialized art collection within the Louvre, considered a center of enlightened thinking, public education, and taste-formation?

NATIONAL VS. UNIVERSAL HERITAGE

A discourse on the ethics of official art collecting emerged in France a generation before the Galerie Espagnole, during the Republican and Napoleonic spoliations of art (1793–1814). The Republic's efforts to separate Church from State led to the closure of many French religious properties and the transfer of the artwork in them to public institutions like museums. Catholic royalists like Taylor bemoaned this secular appropriation of Church property in their own country, but he greatly benefited from it during his mission in Spain. French military forces under the Republic and Empire raided and transported artistic masterpieces, like the *Apollo Belvedere*, from conquered foreign lands (Fig. 6) to Paris.[12] Writing between 1794 and 1796, Luc Barbier justified the French appropriation of art by judging the foreign peoples that the French Republican forces had conquered to be undeserving of great art, because they had not rejected monarchy and they lacked the aesthetic taste to appreciate the art as the French did (thereby implying that the French were superior).[13]

Barbier's opinions were challenged by the art theorist A.-C. Quatremère de Quincy (1755–849) who, with artists and other concerned citizens, signed a petition to the French government in 1796 decrying its spoliation of art from Italy. In that same year, Quatremère wrote letters to General Francesco Miranda (1754–1816) explaining his position on art as cultural property, "this property that is the most national, the most sacred, the most inviolable of all" [14] Quatremère rejected the Republic's legal claim to the spoils of war: "in civilized Europe, all that which belongs to the culture of the arts and sciences is beyond the rights of war and victory; ... all that which serves the local or general instruction of a people must be sacred." [15] By using terms such as "moral," "right," and "honorable," Quatremère clearly condemned such extractions of art from other countries as unethical.

Quatremère also argued on aesthetic grounds against taking art from its country of origin. In

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11 Jubinal, 1838, p. 18.

12 The concept of artistic patrimony was established in 1789 when the French state began to appropriate Church property and called it *biens nationaux* (national property). As was done in Spain beginning in 1835, commissions were established to determine the quality of the art works and to which museum the art would be assigned. The very best art usually went to the Louvre, established as the national art museum in 1793. See Andrew McClellan, *Inventing the Louvre: Art, Politics, and the Origins of the Modern Museum in Eighteenth-Century Paris* (Berkeley: University of California Press, 1994).

13 Barbier wrote in 1794, "These masterpieces had been sullied over long by the aspect of servitude; it is in the bosom of free folk that the works of celebrated men should remain; the tears of slaves are unworthy of their glory," and in 1796, "The French Republic, by its strength and superiority of its enlightenment and its artists, is the only country in the world which can give a safe home to these masterpieces. All other Nations must come to borrow from our art, as they once imitated our frivolity." Both translated in Edward P. Alexander, *Museum Masters: Their Museums and Their Influence* (Nashville, TN: American Association for State and Local History, 1983), p. 89 and pp. 89-90.

14 Quatremère de Quincy, Letter to General Miranda, 1796, in *Lettres sur l'enlèvement des ouvrages de l'art antique à Athènes et à Rome* (Paris: chez Adrien le Clère et Bourgeois-Maze, 1836; reprint Fayard 1989), p. 199. The word "patrimoine" appears in his seventh and last letter, p. 246, when he reversed Barbier's charge of barbarity from the conquered peoples to the military pillagers.

15 Quatremère, 1836/1989, pp. 215-216.

his seminal book, *Considérations morales sur la destination des ouvrages de l'art*, published in 1815, he maintained that, by destroying the original context of the work of art, one impoverished both the art and the viewer's experience of it.[16] The French sculptor Louis-Pierre Deseine agreed:

> *Artistic monuments are comparable to certain indigenous plants that will not endure transplanting. All monuments derive their appeal from the place in which they are displayed and from which they cannot be removed without killing them or stripping them of all historical, moral, and political relevance.... only there can the historian enter into dialogue with it and ... only there will that monument make known to posterity the state of the arts and the spirit of the age in which it was made.*[17]

This same argument was put forth at the time of the Galerie Espagnole's formation. Writing about the Spanish Old Master paintings that Marshal Soult had acquired in Spain during the Napoleonic occupation (1808-1813), the art critic Alexandre de Saint-Chéron cast aspersions on Soult's collecting ethics, and argued that if war could have ethics, so should art collecting:

> *If we have come to understand that war must be waged today, between civilized peoples, by respecting the honor of women, the weakness of children ... will we comprehend that it must also respect a nation's genius? ... doesn't this mean that the intellectual works of a vanquished people are always outside the law of the victor? Should it not be the same for works of art? The creations of literature or the arts are property that belongs to all of humanity, and therefore each people who gave birth to them is their sacred guardian. Misfortune to the victor who violates this deposit, it is sacrilege! Each work of art, being the original expression of national genius, has its necessary place among the people who produced it ... To take that work away is to destroy that marvelous unity. That is why we never approve of this craze of going to pillage a country of its monuments, as was just done for the obelisk.*[18]

"Even in the nineteenth century, the argument that art is universal patrimony was highly problematic."

It is intriguing that while Saint-Chéron brought in the concept of art as universal patrimony, belonging to the entire world, he came down firmly on the side of the native people as the rightful owners, and obligated guardians of that art. His reference to the Luxor obelisk seems intended to tie Baron Taylor, with whom the obelisk was strongly associated, and who was, at that very moment, illegally collecting art in Spain, to Soult's unsavory methods.

But the debate over cultural property became messy when, in 1818, Quatremère shifted his position on artistic patrimony by pronouncing it to be a universal, rather than a national right. In his later argument, the primary duty was to conserve great art for the widest audience, rather than to maintain it in its original context or for its native culture.[19] Thus, preservation of the art and public access to

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16 Quatremère de Quincy, *Considérations morales sur la destination des ouvrages de l'art* (Paris: chez Crapelet, 1815), p. 38. He decried "the mania for collections, and the abuse of works that one designated to fill them" because they "take from the Arts what is their legitimate patrimony, to disinherit them, in some sense, by banishing the[se works] from all political, religious, and moral functions."

17 Louis-Pierre Deseine, *Opinions sur les musées* (Paris, 1803), pp. 241-242, cited in translation in McClellan, 1994, p. 195.

18 S.-C. [Alexandre de Saint-Chéron], "Galerie de tableaux du Maréchal Soult. Murillo," *L'Artiste*, no. 11 (1836), p. 41.

19 Quatremère left undefined *Who* decides if art is too limited in its access, too threatened by temporary or permanent conditions? *What* is considered "native" art? Is it only art made by native-born artists, even if produced abroad? Or, does it include art made in that country, or for one of its people, even if the artist were a foreigner?

it took precedence over concerns for the experience at the original site if the latter were dangerous or isolated. In response to Antonio Canova's request for his opinions on the Elgin Marbles, which had been removed recently from Athens and put on display in the British Museum in London where Quatremère saw them in 1818, the Frenchman warmly supported their extraction and exhibition as beneficial both to the Marbles and to Greek and British culture. Quatremère defended his new position with three claims:

- The political authority of Athens had given Lord Elgin, the British ambassador, the right to take the Marbles, in thanks for the British military aid in confronting Napoleon;
- The Marbles, unlike the works taken by the French Republican and Napoleonic forces from foreign museums, were deteriorating in Athens, threatening their very existence; and,
- The sculptures could not be seen well from the ground at the Acropolis and thus, were not justly appreciated by artists and tourists.[20]

In 1846, in words that resonate with the 2002 "Declaration on the Importance and Value of Universal Museums," . . . [Baudelaire] wrote: "a museum devoted to foreign art is a place of international communion . . ."

What had caused Quatremère's change of heart? It occurred at the very time that he and other Frenchmen witnessed the forcible removal from the Louvre of art works that had been taken by French occupying forces under Napoleon and were ordered repatriated to their foreign owners by the restored French Bourbon king Louis XVIII. Nevertheless, French officials and Louvre administrators did all they could to retain control of these masterpieces. Even Frenchmen who had repudiated Republican and Napoleonic spoliations of art felt anguish at their worst nightmare come true: all art was vulnerable to military appropriation, including that which was held in a national museum, which belonged to the people, not their ousted leader.

Even in the nineteenth century, the argument that art is universal patrimony was highly problematic. Who decided when international interests outweighed national or private ones? Who determined when great art was in danger, or who would be the best caretaker of it? Decision makers were often people from outside the art's country of origin or even the art world; typically, they came from a more "civilized" (read, dominant or wealthy) culture that believed it "knew better", or from the political realm, where art figured as diplomatic capital. Referring to the Galerie Espagnole, the art critic and poet Charles Baudelaire contributed to the notion that native cultures benefit from having their art dispersed abroad. In 1846, in words that resonate with the 2002 "Declaration on the Importance and Value of Universal Museums," signed by eighteen major museums in Europe and North America,[21] he wrote: "a museum devoted to foreign art is a place of international communion where two peoples, observing and studying each other more at their ease, achieve mutual understanding and fraternize without argument."[22] Yet, it is obvious in Baudelaire's fantasy that the native culture is merely represented by its mute, pictorial art, and would remain entirely captive to its new owner's gaze and opinions. In the case of the Galerie Espagnole, the location and function of the Spanish paintings were radically altered

[20] Quatremère Letter to Canova, 1818, in *Lettres sur l'enlèvement*, 1836, p. 90.

[21] For the full text of the Declaration and commentary on it, see *ICOM News*, no. 1, 2004 available at http:icom.museum/universal.html. The author thanks the editor Sharon Flescher for bringing this document and its relevance to her attention.

[22] Charles Baudelaire, "Salon of 1846," in Baudelaire: selected writings on art and artists, trans. by P.E. Charvet (Cambridge: Cambridge University Press, 1972), p. 49.

by Frenchmen with more money and legal autonomy than their Spanish contemporaries. And when the Galerie Espagnole paintings were sold at auction and scattered to numerous owners (many of its pictures remain unlocated to this day), who saved the art then? Who benefited?

It is interesting to note that Quatremère's letters to Canova endorsing the universalist viewpoint, written in 1818, did not appear publicly in France until 1836, when the formation of the Galerie Espagnole was underway. They were published together with his earlier anti-universalist *Considérations morales* (1815), thereby apprising readers of his altered position on ethical art collecting. In 1836, his universalist stance was no doubt useful to the organizers of the Galerie Espagnole. Indeed, during the two years that followed, many reviewers of the new museum defended its creation with reasoning similar to Quatremère's concerning the Elgin Marbles. Several apologists emphasized the fact that Taylor actually purchased every picture in Spain, distinguishing his acquisitions from those made by Republican and Napoleonic force and coercion. [Nevertheless, Taylor still committed crimes in *exporting* Old Master Spanish art.]

Several French critics absolved the museum's organizers of any wrongdoing by blaming Spaniards who, they maintained, willingly sold their paintings to the French agents. Some of these Spaniards, like José de Madrazo (his son Federico painted Taylor's portrait, see Fig. 2), seemed to embrace Taylor's mission, for they believed that the new museum in Paris would bring honor to and greater appreciation for Spanish art outside Spain. Favorable reviewers often cited the harm and obliteration threatening these paintings in Spain from the ongoing violence of the Carlist war[23] and the government-ordered closings of religious institutions as evidence that the art was better off in Paris. They neglected to mention, however, that the Spanish government was already creating public art museums to preserve the art it expropriated from closed religious orders. Most French readers were unable to judge the accuracy of these reviews of the Spanish Gallery, and likely accepted them as true.

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The Galerie Espagnole was first and foremost a political project, conceived by the French administration and carried out in secrecy with government funds at the king's pleasure. In the past, art historians have primarily discussed the collection as a source for the aesthetic innovations of artists like Courbet and Manet, despite the few direct responses to specific paintings in the museum while it existed. There are other problems with such a narrow and, frankly, whitewashed view of the Spanish Gallery. Instead, the Spanish Gallery can and probably should be seen as part of a new politicized practice of forming public art collections, often by exploiting circumstances in other vulnerable cultures.

The Galerie Espagnole closed to a resounding silence. There was no press coverage, few nineteenth-century nostalgic remembrances of it, and no historical studies until well into the twentieth century. Perhaps eleven years is insufficient to make an indelible impression on public consciousness, but what public art museum exists for little more than a decade? It may have had more to do with the *way* in which the museum was created: the lack of transparency; the questionable quality of the collection; the final betrayal by the former French king. Once the status of the Galerie Espagnole as cultural heritage was shown to be fraudulent, the public forgot it, and only a handful of artists like Manet, a master of the ironic appropriation, sought to recall some of its absent paintings.

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[23] The Galerie Espagnole mission took advantage of the political, economic, and social instability caused by the Carlist War, begun in 1833 by Carlos Maria, brother of the recently deceased king Fernando VII. In 1830 Fernando altered the law of royal succession to allow his daughter Isabel to reign after him, thus excluding Carlos, who would have been the rightful heir. Not long before the Galerie Espagnole mission, the French offered military aid to the Spanish government, which allowed French naval vessels free and unfettered access to Spanish ports, ostensibly to transport the newly formed French Foreign Legion to Spain. Taylor and his assistants used these warships to transport the paintings — essentially, contraband — out of Spain without review by Spanish customs.

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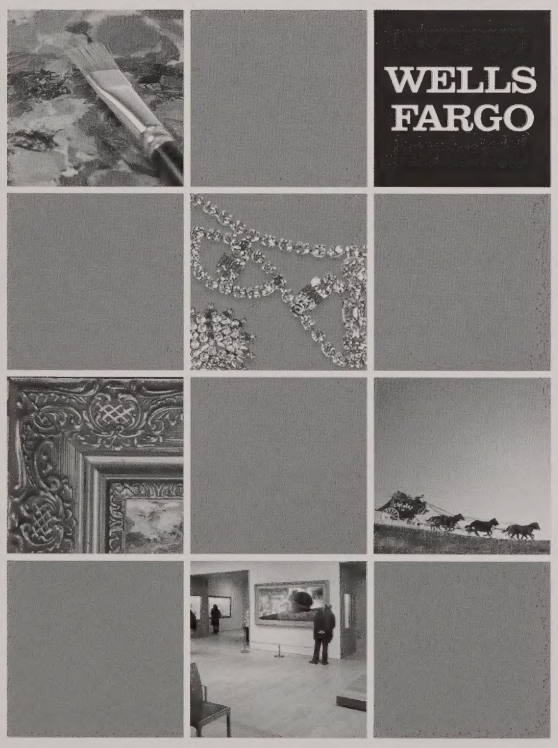

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ART INSURANCE: WHAT EVERYONE IN THE ART WORLD NEEDS TO KNOW

Co-sponsored by the Art Law Committee of the New York City Bar Association
& the International Foundation for Art Research (IFAR)

APRIL 12, 2007

EDITOR'S NOTE

On April 12, 2007, IFAR and the Art Law Committee of the New York City Bar Association joined forces to host a program at the Bar Association on art insurance. Attended by more than 200 people, the program focused on both the practical and legal aspects of insurance. Ten speakers, plus moderators, addressed a variety of issues. Below are the edited transcripts of their talks and the Q&A that followed the sessions.

PART I

ART INSURANCE 101 AND BEYOND: UNDERSTANDING AND NEGOTIATING THE POLICY & RELATED AGREEMENTS

MODERATOR:

SHARON FLESCHER
Executive Director, International Foundation for Art Research (IFAR)

SPEAKERS:

STEVEN PINCUS
A Broker's View of Art Insurance

PAYCE LOUIS
Reinsurance and its Effect on Fine Art Insurance

DORIT STRAUS
Underwriting Issues

BRENDAN CONNELL, Esq.
Museum Loans and Insurance

JUDITH PEARSON
Art Title Disputes

PART II

AGREEMENTS AND DISAGREEMENTS: STORIES FROM THE FRONT LINES

MODERATOR:

AMY J. GOLDRICH, Esq.
Attorney in Private Practice

SPEAKERS:

JOHN KOEGEL, Esq.
Legal Issues When Property is Lost

ELLEN HOENER ROSS
Evaluate, Explain and Expedite

GREGORY J. SMITH
The Job of an Insurance Adjuster

KATJA ZIGERLIG
How Insurers Deal With Claims

ANDREW FAINTYCH
Fine Art Shipping and Storage

PANEL I

PANEL II

INTRODUCTIONS

HOWARD N. SPIEGLER*

After the Art Law Committee of the Association of the Bar of the City of New York formulated the idea of presenting a program on art insurance, we were very fortunate to have Amy Goldrich as one of our members. Amy is chair of the subcommittee on insurance and, from the Bar Association side, has been responsible for putting this program together with important help from other subcommittee members and other members of the Art Law Committee.

We are also very fortunate to have worked on this program with Sharon Flescher, Executive Director of IFAR, the International Foundation for Art Research. IFAR is an educational and research organization that offers impartial and authoritative information on authenticity, ownership, theft and other art-related issues. It also publishes an excellent journal and regularly puts on extremely interesting public programs on these and other issues important to the art community and to the public at large. We are thrilled that we are able to join forces with IFAR to jointly present this program.

* Howard N. Spiegler, Esq., is Chair, Art Law Committee, Association of the Bar of the City of New York, 2005-2007, and a partner in the law firm of Herrick, Feinstein LLP.

INTRODUCTIONS

AMY J. GOLDRICH*

It is a rather poorly kept secret that many in the art world don't always use "best practices" when taking care of their art or the art that is entrusted to them. It is much more comfortable to whistle past the graveyard, pretending or hoping that everything is, or will be, okay. It is a better kept secret that many high-end parties and organizations have not paid sufficient attention to the language of their policies.

Insurance has always been important to protect the economic interests of those who own art and antiquities. A spiraling global art market and an increased awareness of the considerable scope of possible losses – from 9/11 to Hurricane Katrina and the Momart warehouse fire, to the individual case of Steve Wynn's elbowing of a Picasso painting that he reportedly was about to sell for $139 million – makes it even more important for everyone to understand the insurance policy. Hence this program, which focuses on the policy as a negotiable agreement that can give more protection to those who know what to ask for.
We hope that this program on art insurance will help people to look more closely at, and with greater understanding of, a very long contract with tiny print that makes people give in to an understandable human instinct to avoid that which is unpleasant or not easy. But a little information can go a long way, and diligence is rewarded. Every year at policy renewal time, each of us has a chance to fix the problem, or find a little more advantage or benefit. This seminar is designed to enable everyone to do just that.

SHARON FLESCHER**

As a nonprofit organization that works at the intersection of art scholarship, art law, and the public interest, IFAR has had a longstanding relationship with the Art Law Committee of the New York City Bar Association. In 1971, Frank Feldman, then chairman of the Committee, approached a relatively new IFAR (we were created in 1969) suggesting that the two organizations work together given our common interests. Not long after that, he joined our board. He is still on our Law Advisory Council, as are several other members of the Bar's Art Law Committee.

For this art insurance program, IFAR and the Bar Association have laid out an ambitious agenda. IFAR comes by the subject naturally. We are interested in art "objects"—their attribution, authenticity, provenance, theft, and, by extension, protection and preservation. Adequate insurance is essential, but too few people obtain it and not many understand the intricacies of their policy, until it is too late. We have organized many programs and written many articles on this subject.

While the second panel, moderated by Amy Goldrich, will focus on legal issues and recent cases – the "sexy" stuff – the first panel, which I am moderating, "Understanding and Negotiating the Insurance Policy," deals with the basics, but it won't be dull.

We have assembled some of the foremost experts in the field of art insurance – combined, they have more than 75 years of experience – to address the issues from a variety of perspectives. Without further delay, I introduce our first speaker, Steve Pincus.

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* Amy J. Goldrich, Esq., is an attorney in private practice in New York and founder of the Law Offices of Amy J. Goldrich, which focuses on the contemporary art world.

** Sharon Flescher, Ph.D., is the Executive Director of IFAR and the Editor-in-Chief of *IFAR Journal.*

PANEL I

A BROKER'S VIEW OF ART INSURANCE

STEVEN PINCUS*

There are many things that art collectors and dealers have to keep in mind relative to insurance in order to help the claims process move quickly and come to a positive end.

A private collector must document his collection, know the value of the collection – how much insurance the broker is being asked to put in place – and know the location of items in the collection – are they in a warehouse, in multiple homes, on consignment, or out on loan to a museum? Various methods for doing this are:

- Invoices
- Auction records
- Appraisals
- Schedules
- Collection Management Systems (CMS)

A CMS helps an active collector or someone new to the process put all the information in one place. This is important because in the event of a loss, clients have to tell insurers what they had, and that is difficult to do after there has been physical damage or loss of the item.

A fine art dealer's policy differs from the private collector's policy in that the dealer's inventory comes in and out. Dealers are usually not required to have a schedule as part of the policy. In event of a loss, the claim for owned inventory will usually be settled based on selling price less a percentage – usually 20%, which is agreed to when the contract is written. Items on consignment for sale are normally valued at the consignment value plus a percentage – usually 10%. A key point to remember is that a consignment or loan agreement should be supported by what the insurance contract will cover in the event of loss. If the settlement valuation is as stated above, then the loan agreement or consignment contract should address that the consignee's responsibility for this property is in accordance with what the policy will pay.

The standard fine art insurance policy has a covered causes of loss provision that reads – all risks of direct physical "loss" or damage to covered property. It has always been the position of insurance companies to exclude conversion type losses. So, in the past when someone consigned a work to a dealer for sale and the dealer did not return the work or pay the agreed amount due, it was believed that this was not a covered loss on the consignor's insurance contract.

This exact situation occurred in Chicago recently (the *Frigon* case), and a claim was denied. The client sued the insurance company (Pacific Indemnity), and the court awarded in favor of the claimant/consignor. This new case law may very well change the way these claims are settled in the future.

* Steven Pincus is Senior Vice President, Fine Art Practice Leader, DeWitt Stern Group, Inc., New York

One of the most effective ways for a fine art collector to avoid a problem at the time of a claim is to have a scheduled contract with either an agreed amount per item or "current market replacement value" at time of loss, whichever is greater. The collector may have to have an appraisal completed prior to the policy becoming effective, but it may well be worth it. Policy contracts that have unscheduled amounts of insurance put the responsibility of proof of value at the time of loss on the insured party. In some cases, however, an unscheduled policy may be the best course of action depending on the number of smaller valued items in a collection.

"Should you, as a collector, lend to individuals and /or entities or institutions, be careful. Check the terms of their policy, as the insurance responsibility should be transferred to the borrowing party."

The issue of territory of limits of the policy is a new and interesting one. The world of art collecting, exhibitions, and gallery activity is reaching to parts of the world not previously thought of with regard to modern and contemporary art. Most art insurance contracts cover territory worldwide, and countries such as Russia, China, and Dubai are now becoming commonplace locations where art is viewed and sold. As such, you have to be careful that insurance is properly in place and security has been addressed.

A way to help avoid potential problems is to be sure to use insurers who specialize in fine art and collectibles and are familiar with your collection and the ways in which it is stored, shipped, and displayed.

Should you, as a collector, lend to individuals and /or entities or institutions, be careful. Check the terms of their policy, as the insurance responsibility should be transferred to the borrowing party.

When leaving items with conservation firms — most will not accept liability — ask for a waiver of subrogation from your insurer.

Fine art packers, shippers, and storage warehouses, too, will usually not accept liability by contract. Be careful to use a proper fine art warehouse, and know the other items that are stored there. There have been a number of significant losses at so-called fine art warehouses, which, after closer inspection, revealed an inferior operation. So it is important to ask what else is stored in the warehouse because it may not be as safe as you think.

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REINSURANCE AND ITS EFFECT ON FINE ART INSURANCE

PAYCE LOUIS*

This is a discussion of a seemingly esoteric but important subject: reinsurance – but without the math of reinsurance. Reinsurance affects every other aspect of art insurance. How, you may ask, does it affect you?

Reinsurance is a means for an insurance company to protect itself against the risk of loss. It is the insurer's insurance company. The insurer provides insurance to protect various lines of business, and the reinsurers provide insurance to the insurance company. As solid as your insurer is, you should ask how solid the reinsurance treaty is. Regardless of the treaty, the insurance company is obliged to indemnify its policyholders whether or not the reinsurer can pay for its share of the loss. How solid is the reinsurer on your risk?

Is it possible for one reinsurer to have reinsured five insurers on one large collection, in which case one believes the risk is spread among five insurers, when, in fact, it is reinsured by only one? In the 1980s, the London market was affected by the creation of reinsurance spirals, which concentrated risks into the hands of a few reinsurance syndicates.

ART FAIRS AND WAREHOUSES

Accumulation at art fairs and art warehouses is a major concern. Take Art Basel Miami Beach, where 200 leading art galleries from North America, Europe, Africa, Latin America, and Asia exhibit artworks by over 1,500 artists. In 2005, approximately $2 billion worth of art was sold. That means there was about $3 billion of art at this market including unsold works.

As the insurer, it is our responsibility to see if our insured is attending, and with what value, to make sure that we have the ability to pay a claim in this concentrated venue. Read your policy. Does it require you to report all exhibitions prior to coverage attaching, or do you have an unnamed location and transit limit that does not carry restrictions?

Art warehouses, too, are concentrated locations, but without 100% verification of values located at that facility. As a floater, the insured can move his or her artwork to any location within the territorial scope of the policy. We ask that if a storage location is permanent, that is, in use for 90 days or more, it should be named to the policy for accumulation control. Each warehouse storage room is a treasure trove of value. There are only so many quality fine art storage facilities within a given vicinity, so you can imagine that one collector and his friends are all storing at the same one or two locations.

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* Payce Louis is Vice President & Chief Underwriting Officer, AXA Art Insurance.

Let's look at the British art storage and shipping company Momart in 2004. Part of their business involved maintaining artwork in a secure, climate-controlled environment. That is the environment in which their clients believed their artwork was stored. In the end, the company actually maintained two warehouses, the second of which was located in an industrial park with no alarms, no guards, no temperature control. Several of the other warehouse tenants used acetylene or propane gas tanks in their business. On May 24, 2004 fire swept through a London warehouse rented by Momart and destroyed hundreds of artworks. The art loss was approximately £50 million.

AXA Art recognizes that when many valuable items come together at the same time, in the same location, an accumulation problem occurs. We believe proper management structures will have proper controls and processes to hold individuals accountable for implementing procedures. In the end, this creates a more attractive storage environment.

RISK ASSESSMENT AND CRITERIA

AXA Art has created Global Risk Assessment Platform ("GRASP") to implement totally objective and recognized standards for the storage of art. Improving the standards is good for us but also good for the industry and fine art collectors. More than eighteen art storage facilities have been evaluated, and all have welcomed improved standards within the industry and our recommendations resulting from the inspections.

Inherent risks can typically be divided into the following groups:

- Natural
- Technological
- Accidental
- Criminal

One thousand questions are designed to arrive objectively at matrices with 'scores' that address process and function.

Insurers and risk managers use catastrophe (cat) modeling – computer-assisted calculation – to assess the risk in a portfolio of exposures. This helps the insurer decide how much reinsurance to purchase, which ultimately affects our business strategy. So the question we can ask is "Where did all of the earthquake (EQ) capacity go?" Capacity has shrunk on natural catastrophe, otherwise known as "nat cat." Capacity is there, but much of it has been allocated already; in other lines of business, it is available at a price.

With today's computer spreadsheets, catastrophe modeling has been made easier. Catastrophe modelling applies computer-assisted calculations to losses that could be sustained by a portfolio due to a natural catastrophe like earthquake, hurricane, flood, wildfire, or to man-made events like terrorism.

Three types of information go into the model:

1. Geo-coding data—such as zip code; distance to the nearest fault line
2. Structural characteristics of the building; ISO fire coding is not useful here, so if you say your building is fire resistive, it won't help you with an earthquake. There are only a handful of superior EQ-constructed buildings. There are buildings built with building isolators and construction methods that will prevent the building from pancaking.
3. Financial terms — policy limits, total values at risk, deductibles

The model estimates the losses associated with a particular event. Every time an earthquake is reported, the model is updated for the current risk.

These are some of the reinsurance factors that are used to develop the final premium. Primary insurers use reinsurance to manage part or all of their catastrophic property exposures to be able to pay claims and to protect the primary insurer's financial condition.

SCENES FROM THE *EVENING* ON ART INSURANCE

Photos on this page and throughout the Art Insurance section: Steven Tucker.

UNDERWRITING ISSUES

DORIT STRAUS*

Although this panel is billed as Art Insurance 101, I know that many of you in the audience are quite sophisticated about art insurance, so rather than belaboring you with elementary information or boring you with terms and conditions that are common to fine art policies, I would like to delve right into areas that I think are problematic – disturbing trends that I have spotted, which will have a definite impact at the time of loss. After all, it is mostly during a loss that conflicts over coverage and values surface.

VALUATION

Let's start with the issue of valuation. We all know that the art market is booming, that more people are purchasing art, and values of individual items are going through the roof. Auction results are constantly in the media, as well as notorious thefts and claims, publicizing even more the fascination with art as entertainment. I routinely see works of art by Pollock, Jasper Johns, Warhol, and other 20th century American artists, some with values in the tens of millions.

It used to be a struggle to get updated appraisals from insureds – they did not want to bother, did not want to pay the cost of the appraisals and the consequences of higher premiums, or they were concerned that updated appraisals would impact their estate via the inheritance tax. Today, it is a very different story. I not only get one appraisal, but numerous appraisals for the same work at the same time – from the two major auction houses. I guess if the owner is not happy with Christie's, he goes to Sotheby's, and vice versa.

The challenge for underwriters is to sort this out. Do we choose one auction house over another? Do I take the higher of the two figures? Does one auction house have an interest in providing a higher figure because the two are competing on getting the item to auction? Is there a guarantee? Taking this scenario one step further, if there is a loss, and there are two different valuations provided by experts, does this complicate the claim process?

I think that most underwriters share my dilemma and would agree that auction house appraisals, or dealer appraisals for that matter, can have issues of conflict of interest. Most of us would prefer valuations established by independent appraisers who have no financial interest in the work. But appraisers have a tough time competing with the auction houses and the dealers as long as they are willing to provide valuation at no cost to their best customers.

From the insurance industry prospective, another corollary to the ever increasing values is the possibility that claim payments will be larger, not only for total losses, but for partial losses. At some point, with

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single paintings valued at $100 million or more, even a minor 10% diminution in value means that it is a $10 million loss, thus leading to deterioration in a company's loss ratios and their bottom line results. At some point this will challenge the competitive rates and the enormous capacity that is currently available in the marketplace.

PASSING THE BUCK

Next I would like to address the issue of what I call "passing the buck."

Let us start with museum loans. It has always been customary for the borrowing institution to cover all expenses of the loan at no cost to the lender. Traditionally, this has included insurance on a wall-to-wall basis. I believe that in most situations this is still the case, but, lately, I have seen a trend whereby the borrowing institution attempts to pass the insurance risk back to the lender's insurance. Directly following 9/11 it was because of shortage in available capacity for terrorism coverage. I see it more often now where capacity for California earthquake insurance has been exhausted. From my point of view, this is not a favorable trend – particularly when carriers are not notified and may have more aggregation at a location than they realized, without proper reinsurance support.

Another thorny issue is the "other insurance clause," a typical clause in most insurance policies. Not addressing this issue prior to a loan could complicate a claims process. To lenders, this means that their policy will be pulled into a claim situation in the event of a loss and that their premiums may increase due to the loss experience.

Next on the list of "pass the buck" are the dealers who pass the responsibility of providing fine art insurance on to their buyers rather than to their own insurance policy when a collector is borrowing a work he is considering for purchase. The collector does not have any insurable interest in the work at this point. The collector has not made any of the arrangements for transit and packing, and yet the collector is asked to take on the liability of the insurance. I would hope that people providing counsel to collectors would advise them not to take on this burden and to push it back to where it belongs, onto the dealer's policy.

Another complicated area concerns multiple policies insuring ownership shares in a work of art for different entities — for example, fractional gifts. The museum insures its portion under its museum policy, and the individual making the gift insures it under his policy.

Rarely do I see coordination of perils and coverages. Rather, each transaction takes place in a vacuum. The same goes for works of art owned by several owners. Each of the owners only insures his share on his own policy rather than getting a policy specifically for the situation so that both the perils and the adjustment process are coordinated.

Another issue is subrogation, which, although important, does not come into play in fine art policies as much as in car insurance. This is due to several reasons. Most third parties make sure that waivers of subrogation are provided to them, unless they are providing the insurance directly. This is the case with consignment to the auction houses when the auction houses do not provide the coverage. The same situation applies to a museum loan.

In practical terms, the "yield" that the insurance carrier can hope to gain from third party subrogation may be small and not worth pursuing, for example, theft during transit. Most common carriers issue limited bills of lading that specify their liability based not on the value of the item, but on its weight – typically, from thirty to sixty cents per pound. So if a paint-

ing, which is valued at one million dollars and weighs ten pounds, is stolen from a truck, and it is deemed that the trucker is liable, by subrogating the insurance company can hope to get back anywhere from three to six dollars. I do not have to tell anyone in this audience or who reads *IFAR Journal* that no insurance company will subrogate for these sums.

"...I have seen a trend whereby the borrowing institution attempts to pass the insurance risk back to the lender's insurance...from my point of view, this is not a favorable trend..."

One of my pet peeves concerns the consumer's level of knowledge about purchasing insurance. In my experience, many insureds fail to understand the distinction between the insurance broker and the insurer (the underwriter), thinking that they are one and the same.

If you ask most insureds who their insurance carrier is, they will name the broker's company rather than the insurance carrier, who is actually the one who will be making a payment in the event of a claim. Many insureds are not aware that the broker is not financially liable for losses, but, rather, was paid a brokerage commission that is deducted from the premiums that they pay the company.

To be fair to the insureds, sometimes it is difficult to know who is who. Some brokers, particularly the fine art specialty brokers (some of my best friends are fine art specialty brokers), issue their own forms that carry the broker's branding and have the underwriters' signatures at the bottom of the policy. A few have binding authority and are managing agents for the underwriters, who relinquished their authority to the broker.

My last bit of advice is to suggest that consumers spend more time with their brokers differentiating between the various insurers. The brokers will help them evaluate the financial strength of the insurer or the group that the insurer is part of; the company's understanding of the nature of fine art and how the art market operates; the types of services that are offered for risk management and exposure control; and the company's philosophy towards claims payment.

Making an intelligent decision using some of these parameters can do a lot to eliminate the thorny issues that may come up during a loss.

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MUSEUM LOANS AND INSURANCE

BRENDAN CONNELL*

Borrowing and lending art is a tricky business, and it helps to have a good loan agreement with good insurance language that underscores and even amplifies provisions in the policy. At best, the language in the loan agreement can bring up issues that may not be fully covered or set forth in your policy.

The Guggenheim Museum's incoming loan agreement was drafted by the museum's team of lawyers, including myself. The insurance language hopefully addresses some of the situations that come up when museums borrow art. When they do borrow, one of two things can happen: 1) The museum may provide its own global insurance policy or use some combination of its own policy and a U.S. government indemnity. This is insurance that the government provides for artworks lent from overseas (or a combination of works from overseas and works from the U.S.) for certain international exhibitions in order to encourage the exchange of art. 2) Or, the lender can elect to maintain its own insurance, and, typically, museums would pay some portion of the premium for the lender to do that. In a case where a lender maintains his own insurance, a museum would request a waiver of subrogation. The first scenario is much more fun when you are the museum attorney; it is more interesting when you apply your own coverage, or a combination of your own coverage and a federal indemnity, and have to cobble together the insurance.

Sometimes, loan agreements from international lenders have very aggressive language. They want to get the museum, as borrower, on the hook if there is some deficiency – in the view of the lender – in the payout. Because of aggressive language in the past, we have a provision in our loan agreement that states that, in

the event of loss or damage to the work, the recovery, if any, is limited to the amount paid under insurance. We want the lender to be clear that the payout under insurance or indemnity is *it* and that the museum itself cannot be on the hook in the event that the lender is dissatisfied with the payout.

EXCLUSIONS

Another insurance topic that has occupied our time is that of policy exclusions. For many New York institutions, there are standard exclusions, one of which is terrorism. Prior to 9-11, most policies, I believe, included terrorism as part of the coverage. After 9-11, underwriters issued endorsements, and terrorism was added as an exclusion. That has created a lot of work.

International lenders will often insist on terrorism coverage before lending a work for exhibition in the United States, particularly in New York City. So, the tricky thing is how to deal with lenders who are

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insisting on terrorism coverage when you don't have it under your policy. First, we try to negotiate it out, but we don't insist on it. This is easier said than done, especially in New York. But the insurance provided under the U.S. government's indemnity program includes onsite terrorism coverage, so to the extent that you can get all or part of the work covered under the federal indemnity, it is good. But it is a tricky thing and something that we are always negotiating. If the lender has terrorism coverage, it is best if the lender can maintain the insurance. Then there is no need to worry about it. There are situations where we would not be able to show a work at all – the public would not see it – if the lenders would not compromise and maintain their insurance.

Our insurance language makes clear that coverage can change. The terrorism coverage exclusion endorsement, for example, was issued just two or three weeks after 9-11, changing the scope of coverage for most policies. Terrorism coverage was provided, and then, one day, it wasn't. So our loan agreement makes clear that the coverage may change. In most cases it is out of our hands if the underwriter changes the coverage because of world events.

DELICATE MATERIALS

Many contemporary artworks consist of breakable or delicate materials like televisions or ground aspirin. Nobody anticipates that the aspirin goes in a bag that gets put in a storeroom. For works that have components like these, the artist himself or herself imagined that the components were going to be re-fabricated every time the works went on display. Unlike a canvas with paint on it, the component is not made to last forever and a day. So our insurance language makes it clear that for this type of work, if some component breaks, or if a TV breaks, and if the work can be borrowed, that the owner is not going to say, "This work is worth $3 million, and since the video system or the TV broke, there is a loss of 30% in value for the work." For any component that can be manufactured or reconceived, the loan agreement makes clear that it just covers replacement value for that piece. So if the TV dies, the replacement value for the TV is $500. There is no real incremental loss in value for the artwork.

TIME LIMITS AND DEDUCTIBLES

Other parts of our insurance language, hopefully, supplement policy language. There is a provision to the effect that once damage to the work is discovered, it must be reported within a certain period of time. We also have a provision that, once we return a work to a lender, the lender will let us know within a certain period of time if there is damage to the work. After you return a work from an exhibition, you don't want the lender to make a claim six months down the line saying, "We just opened the crate and noticed there is a scratch that we didn't notice before." Our loan agreement language acts to supplement the insurance policy language.

Another issue is policy deductibles. If there is loss or damage to a piece, the first ten thousand dollars or the first twenty thousand dollars is not covered under insurance. In dealing with any kind of loan transactions, one should be sure to address that. In the event of loss or damage, who will cover the deductible under the policy? In most cases it makes sense that the party who is exhibiting the work when the damage happens should be responsible for the deductible, but that is something that should be contemplated and negotiated as part of the transaction. These are just a few of the points that The Guggenheim Museum thinks about when we borrow works of art.

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ART TITLE DISPUTES

JUDITH PEARSON*

The last several years of the art market have been characterized by escalating art values translating to a seller's market, where transactions have been quick and the standards loose. When the art market corrects, we will see the ramifications of this "caveat emptor" attitude. Since the transaction standard is "buyer beware," one challenge is a guarantee of clear title. There is no single law that was created around the ownership of art. The complexities of the art market reach many different bodies of law, all created based on legal doctrines in contexts other than art.

Some of the traditional areas of concern emanate from historical theft such as what took place during the Holocaust. In part, because the Nazi's were excellent record keepers and the thefts could be documented, the victims and their heirs won significant cases, leading, in my opinion, to a number of more dubious claims that are now testing, among other things, the definition of a forced sale. Similar claims by one family were brought recently against both the Detroit Institute of Arts and the Toledo Museum of Art. While both museums were successful, it cost them, combined, almost one million dollars to defend themselves.

With the failing health of Castro and his rumored imminent death, we anticipate similar causes of action around the Cuban Revolution. In fact, we have seen some claims emerging with parallels to the Nazi confiscation. One such claim was brought by the Fanjul family when they learned that Sotheby's allegedly had knowledge of the whereabouts of one of their paintings. The family has still not received the painting or information about its whereabouts; they are in pursuit of their confiscated art.

More important is the fact that several billion dollars worth of art is reported stolen annually worldwide, while some estimates say that 25% or more of "stolen" works are not registered as stolen for a variety of reasons, including a perception that not reporting the theft will result in the work more quickly emerging in the marketplace. Once there is a theft in the chain of title, good title cannot be passed, and purchasers are at risk of losing their art. A recent example would be the Norman Rockwell painting that Steven Spielberg purchased in 1988 and returned to the selling dealer in 2007. Interestingly, the painting was reported stolen in 1973, but the theft report was missing when the FBI records were searched in 1988.

We have found that while many ownership disputes are a result of theft, a greater frequency of claims result from more traditional liens and encumbrances that are common in real property transactions.

* Judith Pearson is President of Aris Title Insurance Corporation and Aris Corporation.

Beaverbrook Canadian Foundation v. Beaverbrook Art Gallery is a great example of how the lack of available documentation can lead to significant litigation. The dispute begins with a museum and foundation operating differently from what the original gift documents provided. As a result, there are questions related to whether works were gifted or loaned in 1960, discrepancies in export documents, and a foundation hoping to sell important works. However, the ultimate litigation was over which institution — the gallery (museum) or the foundation — had the authority to determine the fate of the works.

Another illuminating gift scenario that developed into a claim regarding the authority to sell is the dispute between Fisk University and the Georgia O'Keeffe Foundation for allegedly breaching the conditions of O'Keeffe's 1949 gift of the Stieglitz Collection. This case was in litigation for more than two years and was thought to be settled in August 2007. However, the legal maneuvering continues.

Numerous examples exist relating to dealers not paying sales tax, which leads to tax liens on art. In the early 1990's, for example, there was a lengthy civil complaint arising out of a transaction to purchase a collection of 62 works, of which 58 were immediately sold for an eighteen million dollar profit. The investors allegedly did not pay income tax and later filed for Chapter 7 Bankruptcy. The government says it later was informed that the company was insolvent and that two of the paintings were sold, including a Clyfford Still that went to a dealer. The government then placed liens on the remaining four paintings even though two were sold to presumably innocent purchasers. Those paintings cannot be sold until the liens are removed, which in all likelihood will not happen until the bankruptcy can be resolved. Similarly, in 2003 the New York district attorney brought at least three cases against galleries alleging they did not collect sales tax from famous corporate culprits such as Dennis Kozlowski and Samuel Waksal.

We have witnessed significant claims resulting from the financial insolvency of important galleries. In 2006 Berry-Hill in New York filed for bankruptcy, illuminating many of the issues. The gallery defaulted on some loans that were collateralized by inventory. Many consignors were at risk; some had works of art already sold but not yet paid, while other consignors were at risk that their art would become an asset of the bankrupt gallery. After significant litigation costs, many of the paintings that were not sold were returned to the consignors. However, the consignors of those works that were sold but not yet paid suffered a loss. Subsequently, articles were written about the importance of filing a UCC lien as part of a consignment agreement. All that does, however, is create a priority position as a creditor. It does not ensure payment.

Currently there are multiple claims filed against Salander-O'Reilly Galleries for non-payment of obligations. While the gallery has not filed for protection with the bankruptcy court, many of these same potential risks exist. Also, there are "authority to sell" issues between the gallery and the heir of the artist Stuart Davis. Earl Davis has been in negotiations to receive payment for works that have been sold as well as paintings that have not yet been sold but have either disappeared or are on consignment to other galleries. It has been reported that 102 of Stuart Davis's works of art were returned to Earl Davis. Another 124 that Earl Davis could identify have not been returned, and two other works of art, listed as collateral for loans, are also missing.

These consignment agreement disputes are the essence of why the decision in the *Frigon v. Pacific Indemnity* case in federal court in Chicago will be interesting to follow. In this case the consignors were not paid when the consigned art was sold to private buyers as well as to another gallery. When the Frigons were told that the gallery was insolvent and they would not receive payment for their eleven consigned works, they

Tax Law
Contemporary Theft
Trust & Estate Law
Insurance Law
Clear Title
Contract Law
Export/ Import Law
Historical Theft
Art Law
Matrimonial & Divorce Law
Commercial Law (UCC)
Bankruptcy Law
Conflicting Principles and Emerging Laws
■ What is a "good faith" buyer?
■ What is the "ordinary course" in a commercial art transaction?
■ Art implicated by all liens (UCC, bankruptcy, judgment, etc.)
■ International laws and U.S. laws entwined
■ Seller liability
■ Tax implications of charitable gifting
■ Fiduciary liabilities for estate and institution trustees
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made a claim under their all-risk property policy. A Chicago federal district court determined that this was conversion and that conversion was covered under the definition of theft. The consignors are now suing the buyers under the theory that when there is theft in the chain of title, good title cannot be passed.

Additionally, potential claims are constantly cropping up from unexpected places. The U.S. government, for example, is asserting ownership of New Deal Era artists' works that were created under the WPA (Works Progress Administration), a government employment program during the Great Depression, as the works come up for sale.

The last area of focus is the unlimited liability created by the standard auction consignment agreement. The standard contract requires that the consignor warranty title to the buyer. It is virtually impossible, however, to warrant title on a work of art that has not been in the seller's possession since the work left an artist's studio. The consignment agreement allows the auction market to rescind a transaction with a time limitation if either the seller or the auction house can be held liable for a title claim. The seller's liability is equal to the proceeds of the sale plus commissions, marketing fees, and litigation cost, if any.

Buyers, sellers, museums, and fiduciaries should all think about the potential liability issues created by the lack of transparency in art transactions, which often leads to title disputes. If you don't own the art, you can't sell it, donate it, or gift it.

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Q & A: PANEL I

ART INSURANCE 101 & BEYOND: UNDERSTANDING AND NEGOTIATING THE POLICY

Q The Michel Cohen case and the recent bankruptcy of the Berry-Hill Galleries point to the importance of consignors obtaining UCC1 statements. To what degree do you insist that your clients protect themselves with these type of documents?

ADORIT STRAUS (DS): I cannot say that is what we do as underwriters. We usually receive bills of sales when clients make a purchase, and we add the items. When they sell, they tell us to delete the object from the policy. That's the end of it. . . . We speak to our brokers about educating clients regarding proper documentation so that they are not in this type of situation. Handshakes obviously don't work very well.

STEVE PINCUS: But I would say the handshake tends to happen more often than it should. Proper consignment agreements, while more prevalent, aren't happening enough.

PAYCE LOUIS (PL): It is difficult to get the insurance company to enforce the proper way of doing business. Proper consignment agreements and proper receipts should always be there. Is it the insurance company's fault for being lax and for accepting applications with missing paperwork? Probably. It's a business decision. We are in a competitive environment; we all have to write business. So, hopefully, it is not heavily weighted towards bad paperwork. We all look for supporting documentation.

Q When an artwork is damaged, what negotiating room does the policyholder have in selecting the restorer or the number of restorers? In the recent Steve Wynn case concerning the damaged Picasso, *Le Rêve,* there were two restorers: the main restorer and the person who, for an additional $20,000, gave the second opinion. Also, at what point does the insurer say, "We don't want to pay for the restoration, we'll just take a loss and keep the work"?

ADS: As underwriters, we don't know who is restoring the work, and there is no coverage in the policy for errors and omissions for the work of a conservator or restorer. . . . Most insurance companies try to get the right conservator or restorer. They will listen to clients through their brokers. If it is somebody inappropriate, there will be a discussion. As to taking a piece that is partially damaged, it is not the intent of the insurance carrier to obtain a work of art that is not totally destroyed and sell it. We intend for the insured to receive the appreciation value. We don't run auction houses, and we are not in the business of buying and selling art.

> **"Is it the insurance company's fault for being lax and for accepting applications with missing paperwork? Probably. It's a business decision."**

PL: We are in the business of restoring the artwork. If we don't have the person who is satisfactory to the collector, the collector can make a suggestion. . . . We have supplemental coverage in our policies for repair and restoration, although we have the right to approve who that restorer is. It costs only $10,000, which is not a lot, but it recognizes that we are trying to help restore the piece.

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PANEL II

LEGAL ISSUES WHEN PROPERTY IS LOST

JOHN KOEGEL*

The biggest issue that arises when property is lost is determining the amount of the loss and what gets paid. It has been settled law in New York State for a long time that when an owner of personal property suffers a total loss, the amount of that loss, the value of that loss, is the retail market value immediately before the loss, less salvage value, if any. Insurance companies, however, ignore the law, at least regarding art, and try to maintain that the owner's loss should be reduced by hypothetical selling commissions that might be payable if the property were sold. And since the selling commission for artwork can be (and for artists commonly is) as much as 50% of the purchase price, insurance companies use this argument to drastically reduce the coverage.

For one year—between 1995–1996—with respect to artists, insurance companies had one case that they could point to, *Swain v. 383 West Broadway.*[1] In this case, an artist named Robert Swain lost 36 paintings. A jury awarded him the full fair market value for the loss of those paintings. On appeal, the New York State Appellate Division (1st Dept.) said that the artist's loss should be reduced by any selling commissions

"We already know that 'all risk' does not mean all risk, but what does 'value' mean in these policies?"

that might have been taken by a dealer if the work had been sold. The court offered this proposition and without any authority, without the matter being briefed and notwithstanding contrary precedent in New York State.

That decision lasted for a year until another case, *Indemnity Insurance Company of North America v. Art Students League.*[2] There, the owner of a painting consigned a work to a gallery for sale and would have received 60% of the purchase price if sold. Regardless of this precisely applicable selling commission, the Appellate Division ruled that the owner should receive 100% of the value because the arrangement was conditioned upon a sale and no sale occurred. But that did not fully remedy *Swain.* So in 2001 the Appellate Division heard an appeal of a case that had been commenced by the artist Christopher Wool, who had lost 160 artworks in a fire and had received a jury award for 100% of the value of his works.[3] The Court affirmed this award stating that the artist is entitled to 100% of the fair market value and that the award should not be reduced by commissions that might have been paid had the works been sold. At the same

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1 *Swain v. 383 West Broadway Corp.*, 216 A.D.2d 38 (N.Y.A.D. 1995).

2 *Indemnity Insurance v. Art Students League*, 225 A.D.2d 398 (N.Y.A.D. 1996).

3 *Wool v. Ayres*, 283 A.D.2d 299 (N.Y.A.D. 2001).

time as the *Wool* case was in the courts, another artist, James Nares, lost 2,138 works to water damage. The jury awarded Nares 100% of the fair market value. That award was also upheld on appeal. In this decision the Appellate Division categorically stated that potential sales commissions are not deductible in assessing the loss. These decisions should preclude the insurance companies from any further assertion that the value of a work of art should be reduced by selling commissions. Nonetheless, I recently received a letter from an insurance company claiming that these decisions do not apply. So even when the law is clear, some insurance companies will still try to avoid full compensation.

In the insurance world right now, there are many unscheduled insurance policies. The owners of these policies and the consignors to those owners believe that those policies cover all risks and the full value of the property. We already know that "all risk" does not mean all risks. But what does "value" mean in these policies? If you compare the valuation clauses from five different carriers,[5] I think you will find the valuation clauses remarkably obtuse. You will see that important words which should be clearly defined are not at all defined. These clauses also focus on situations that rarely exist and conversely they do not address situations that do arise fairly frequently. For example, one valuation clause is structured around two unlikely scenarios: 1) when the insured is instructed by the owner not to insure and 2) when the insured is instructed by the owner to insure. I have seen a lot of consignment arrangements and most do not contain instructions one way or another. So this is a valuation clause premised upon situations that rarely occur.

Another example is the term "consignment value." As I understand the English language, that should mean the value when consigned. Insurance companies, however, claim that this term describes the amount the owner would receive in the event of a sale. And they simply repeat this over and over again. They simply invent a distorted construction and adhere to it, thereby forcing the insured (or the injured party) to litigate in order to obtain full compensation for a loss. I think it is atrocious that insurance companies write these contracts in such an ambiguous and ill-fitting way. They mislead people into thinking they have coverage when in fact they do not, and they force insureds to spend thousands of dollars litigating in order to achieve a proper settlement.

In an obvious reaction to the *Nares* decision, a recent valuation clause from a major art insurer expressly and arbitrarily diminishes the market value of the property by 50%. This new policy also requires the insured to surrender the property to the insurance company. This of course produces the outrageous result of the insurance company acquiring title to work for which it has paid only 50% of its value.

The point I want to make is that many policies exist or are being written right now that purposely offer less than full value coverage. In the case of entrusted property, the coverage is drastically less than full value, even though the law is very clear that the loss and the liability should be full fair market value. Everyone needs to understand that the new policies are going to systematically under insure for artwork losses.

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[4] *Nares v. M&W Waterproofing*, 5A.D.3d 155 (N.Y.A.D. 2004).

[5] Sample valuation clauses were distributed at the program.

EVALUATE, EXPLAIN AND EXPEDITE

THE FUNCTIONS OF AN INSURANCE BROKER IN A CLAIM

ELLEN HOENER ROSS*

The function of an insurance broker in a claim is, essentially, to evaluate the details of the loss, explain the claim procedure to the insured, and expedite the claim; in other words, get the check.

The claim process is initiated by an insured with a report of an incident that may result in a claim. The insurance contract utilized by my office outlines the requirement for Notice of Loss as follows:

> The Insured shall as soon as practicable report in writing to the Company or Wells Fargo Insurance Services, 330 Madison Avenue, New York, N.Y. 10017, every loss, damage or occurrence, which may give rise to a claim under this policy. The Insured shall also file, if requested by the Company, within (90) ninety days from date of discovery of such loss, damage or occurrence, a detailed proof of loss.

There are several important elements of the Notice of Loss which should be highlighted. The policy requires an insured to report in writing as soon as practicable every loss, damage or occurrence which may give rise to a claim. Prompt reporting of a claim allows underwriters to: properly evaluate the extent of loss and determine the correct course of handling, protect their subrogation rights, and, most importantly, set the stage for the expeditious settlement of the claim.

A call to the broker can review the details of the potential loss and determine if the incident may give rise to an occurrence and claim that should be reported. If a claim is small and less than the deductible, we would determine this in the initial conversation and would not report the incident to the insurance company. If, on the other hand, there is significant reason to believe there will be a loss, it should be reported to the insurance company. A shipper, for example, notifies you that a forklift damaged a crate, but the shipper is unable to determine if the painting inside is damaged. This type of incident should be reported immediately. The prompt reporting prevents additional damage by getting experts on the scene to properly unpack the crate. It also protects the subrogation rights of the insurance company.

Another element in the Notice of Loss is the requirement of the Proof of Loss. Some policies require the insured to provide written notice and say that they "Shall also file with the Company within 90 days from the date of discovery of such loss a detailed sworn

* Ellen Hoener Ross is Vice President, Acordia / Wells Fargo Insurance Services.

statement proof of loss." It is important to understand the requirement as outlined in your policy for reporting claims.

"A shipper notifies you that a forklift damaged a crate, but the shipper is unable to determine if the painting inside is damaged. This type of incident should be reported immediately."

Recently, a gallery called me for advice on a claim that was declined. The gallery had lent a piece to a traveling exhibition and received a Certificate of Insurance evidencing "All Risks" "wall-to-wall" coverage for the four venues of the show. The piece was returned damaged. The insurance company declined the loss claiming the damage occurred during the first venue and was not promptly reported. They denied it even though the insured did not know the damage happened at the first venue.

Now that the details of the loss have been ascertained and evaluated, it is time to report the claim to the insurance carrier. The procedure varies carrier by carrier, but basically the report includes a written explanation of the loss, preliminary documents, copy of the policy and contact information to arrange the inspection. Many brokers have the authority to assign a loss directly to an adjuster, this elimates any further delay and allowS us to send someone to the site of the loss immediately, if required.

The next function of a broker is to explain the claim process to the insured. Every claim is handled differently and is governed by the circumstances of the loss and the nature of the damage, the artist, the value, and many other variables. There are, however, certain universal steps.

The insured has an obligation to protect the property. The policy requires the insured to safeguard the property thus allowing the insured to take whatever emergency steps are needed to protect the art and prevent further damage. In a severe fire loss, one of the first activities should be to divide the inventory into: 1) total losses, 2) undamaged goods, and 3) items that need immediate attention.

The insured also has an obligation to substantiate the value or extent of the loss. This requirement includes providing all the necessary documentation requested by the adjuster to support the loss—the books and records. A theft claim would require proof of the value of the stolen object, police report, proof of forced entry (alarm company report), a copy of the report to the Art Loss Register, etc. A shipping loss would require a different set of documents.

In the event of a claim that involves damage to the work of art, the insured and the broker must take a more proactive route. The insured with the broker's help should be involved in the selection of the restorer, carefully review the treatment proposals, monitor the progress of the treatment and, finally, work with the appraiser to determine the loss in value. As the broker, I try to get the insurance company to agree on a restorer who everyone believes is the best.

One job of the broker is to explain the process so that the insured is prepared to cooperate fully with the investigative phrase of the claim. Knowledge of the various steps in the claim procedure helps the process go smoothly. The last and final function of a broker is to expedite every phrase of the claim process. This may mean getting an advance from the carrier, help to resolve a coverage issue, getting the Proof of Loss signed, and, most importantly, getting and delivering the settlement check.

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THE JOB OF AN INSURANCE ADJUSTER

GREGORY J. SMITH*

An insurance adjuster tries to bridge the gap: to get the information from the insurer—based on a claim—to the insurance carrier, then to evaluate the coverage, to try to determine what happened, and to settle the claim. Some people may think it's the "sexy" side of the business—Renee Russo in *The Thomas Crown Affair;* I think it is stressful. I'm going to explain what happens in a claim, and start with the example of a transit loss.

A painting is on consignment from a private collector to a museum. First, the painting is crated by the owner's warehouse. Next, the painting is picked up from the warehouse by a fine art trucker hired by the museum who never sees the crated artwork. Because the museum's trucker never inspects the work, we have no idea of its condition. The truck transports the painting to the museum, and when it arrives, unfortunately, the crate has a hole in its side. We all know where that hole came from. We don't want to blame the poor forklift operator. We open the crate and find a hole in the canvas. Unfortunately, the picture flipped over in transit, but the hole corresponds with the hole in the crate. The museum contacts the broker, who contacts the underwriter, who phones me and says, "Greg, do something." I then contact the insurer, in this case, the museum, and immediately inspect the site of loss, which could be the museum or the trucker, wherever the painting is being kept. I then try to determine the cause of loss, which, in this matter, is easy: a forklift went through the crate and then right through the painting. This simple cause and effect, however, is not always the case. I then ask the museum for all the relevant documents: the loan agreement, any conditional accords, any transit documents such as a bill of lading, and any correspondence with the owner regarding the method of packing and transport. I also ask the museum if it has notified the lender. You might be surprised how often that question is answered, "Not yet. We wanted to hear what you had to say first." Unfortunately, I don't own the artwork, and I cannot make the next few decisions that have to be made.

"If the insurers unilaterally choose the restorer, the owner might say later on that the restoration wasn't good."

Next, the owner and I and/or the insurance company representatives agree on whether the piece can or cannot be restored. If it can, we want to agree on an appraiser and a restorer. Because the insurers don't own this work, it is important that we agree on the restorer. I try to get an agreement among all parties

* Gregory J. Smith is President of G. J. Smith & Associates, Inc.

so that there is no dispute in the event of a less-than-perfect outcome. If the insurers unilaterally choose the restorer, the owner might say later on that the restoration wasn't good. Once we've agreed on the method of restoration and go forward, we consider the loss in value. Both parties select a competent appraiser. Less often, we will jointly select an appraiser. Once we have the two appraisals, we will try to agree on the loss. Unfortunately, with any transit loss, we have potential issues. The first is: who insured the shipment? The loan agreement should define this. If it's nail-to-nail, for example, it means that when the painting comes off the nail and starts the moving process, it is insured by the museum's carrier, in this case, us. But if the owner/lender is in his house and, after taking the painting off the wall to hand it to the trucker, he drops it, who covers that? With a nail-to-nail policy, if he's in the process of taking it from the nail to hand it to the trucker, in theory, the museum's insurer will cover the claim.

"What happens if the loan agreement is under or overstated? That depends on the wording. If the agreed insured value is $1 million but the painting is only worth $500,000, we have a problem."

Where and when did the loss occur and under whose control? In this case, it was damaged in the truck or at some point during transit. But, in a different scenario, there could have been a hole in the crate, and when the crate was opened, there might have been mold on the painting. Then the question would be when did that mold occur? Did it occur because of the hole in the crate? Or, unbeknownst to the museum, had the painting been sitting in a damp warehouse for eight months prior, in which case the loss could have occurred technically before the insurers went on risk?

What happens if the piece is not authentic? I had a very interesting case in New York where the owner loaned a painting he knew was a fake to a museum. The painting was damaged on the way to the museum. The owner knew it was a fake when the loan agreement was written, and, after some research, we knew they knew it was fake. The question became the owner's intent to defraud at the time of the loan agreement.

What happens if there's a dispute on the restoration method or process? When you pick the best restorers, you usually agree on their methodology. But when there is a dispute, we must decide who controls that restoration. I try to have our restorer meet with their restorer to agree on a process.

What happens if the loan agreement is under or overstated? That depends on the wording. If the agreed insured value is $1 million but the painting is only worth $500,000, we have a problem. We might also have a problem when an item has been on loan for a long term and the value has never been adjusted. If you lent a Picasso in 2004, for example, and the loss happens in 2007, the value has probably increased dramatically. If that loan agreement has never been changed, the issue of value will be disputed during a claim. So we always recommend that museums update the values on loan agreements.

What happens when we cannot agree on a loss? If, for example, I think the value lost is 10% and the owner thinks it is 50%. How do you resolve the dispute? Most insurers are interested in settling claims. If every one of my claims went to litigation, or just went in appraisal, I wouldn't be very good at what I do. But 99% of my claims technically settle. I always

recommend that collectors, dealers, and museums have specialist brokers and companies because they expedite the process as well as any professional loss adjuster specializing in the field. I also want to stress the importance of face-to-face negotiations. It's too easy to write an email that reads, "No. I'm only going to pay 10%." But when the principles actually meet in one room, a dispute will usually settle.

"I want to stress the importance of face-to-face negotiations."

All policies have clauses that help prevent a dispute. Ninety percent of all fine art policies, for example, have an appraisal clause. In the event of a dispute, the owner can invoke this clause, which states that if both parties hire an appraiser and the two appraisers cannot agree on the loss, the parties can select a third, "umpire," appraiser to resolve the dispute.

Some policies have a partial loss clause, which states that if there is a dispute after restoration, the piece will be sold at public auction and the difference will be the claim. Most collectors, of course, don't want to sell their artwork. They just want it back. So when a policy includes both the partial loss clause and the appraisal clause, most people opt for the appraisal clause to resolve a dispute.

The last resort for settling a dispute is, of course, litigation. As a loss adjuster, I do everything in my power to settle a claim before that point. There are times, however, when, unfortunately, the lawyers make all the money.

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HOW INSURERS DEAL WITH CLAIMS

KATJA ZIGERLIG*

I'll begin with a positive story from the art insurance claims front. An AIG client lost her bracelet and didn't know how she lost it. Our in-house claims adjuster paid a visit to the insured, who retraced her steps from the day of the loss and realized that the bracelet must have fallen into the lake when she was out boating. The adjuster said it was a covered loss and AIG would write a check for the value of the bracelet, but the client really wanted her bracelet back, not a check. So AIG hired three scuba divers with underwater metal detectors, and luckily, they recovered the bracelet within three hours. The insured was happy, and we now have a client for life.

This story also illustrates the process that we follow at the company, and, I would suggest, reflects how other carriers with a specific arts policy might also process a claim. First, AIG gets a call from a broker or directly from the insured, reporting a loss. An internal adjuster then makes sure it is a covered loss, and, if so, begins the investigation. For claims valued at $50,000 or more, our in-house art experts deal directly with the clients. If we don't have an in-house expert for a particular type of art or artist, we will arrange for an expert contracted adjuster to take all steps needed to handle the loss. Our experts might contact conservators, restorers, or other art specialists. Then, using this information, we will agree with the insured on a settlement – whether it's a partial loss or a total loss – and issue a check. That's the ideal scenario.

As we know, sometimes it doesn't work out that way. I'll discuss a couple of scenarios illustrating claims that we have had and how we have handled them.

Names and identifying circumstances have been omitted. [**Editor's Note:** In the interest of client confidentiality, the following section of Ms. Zigerlig's April talk has been considerably abbreviated for publication.]

SCENARIO 1

When a client's damaged or lost artwork was created by an artist who is still alive, we try to work with the artist to make the client whole. Living artists are usually happy to oversee repairs of their damaged work or create a replacement work in event of total losses. In one situation we encountered, where the artist said that the damage to the work represented a total loss, we paid the artist, with the client's agreement, to create a new painting, and shipped it to the client. This is a good solution also with photographers, who can use the negatives to reprint and, usually, reissue a certificate saying that the new edition is an absolute official substitute having the same value as the original.

* Katja Zigerlig is Manager, Fine Arts Underwriting, AIG Private Client Group.

SCENARIO 2

In another scenario, an intoxicated dinner guest knocked over a client's sculpture. Of course, it was a covered claim, as accidents happen. Fortunately, although the artist was deceased, the artist's estate oversees all repairs. So we sent the sculpture there, and the estate returned it with an official certificate of its work that declared the repaired sculpture complete and whole. The client's curator, however, did not like the new color. AIG argued that there was no loss since the foundation which oversees the artist's legacy had signed off on the artwork as fully repaired and valuable. Eventually, after face-to-face meetings that included the curator of a museum with which the client was involved, we were able to negotiate a settlement, and everyone was happy.

These are just a couple of scenarios that illustrate how insurance companies, and in particular AIG Private Client Group, try to find fair and equitable solutions for their policyholders.

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FINE ART SHIPPING AND STORAGE

ANDREW FAINTYCH*

Atelier 4 Incorporated, a fine art shipping and storage company, occupies a very small niche, but we tend to get involved with everybody. From my perspective, the field is currently much more about commerce. Even museum loans are often a vehicle for a collector to increase the value of his piece. If you think about it purely as commerce, everything has to change hands in order for the value to go up. An artwork may be appreciating in value while it is sitting on your wall, but for you to realize the value, the piece has to change hands. That's where we come in.

"I wish that agents would apply the same stringent set of rules on their collectors that they are trying to enforce on the shippers."

Let me give you a little bit of history about our small industry. In the 1960s and 70s, art shipping was done by household movers—a couple of guys who knew how to wrap a painting. In the mid 80s, with corporate art collecting and the first big wave of market expansion, a lot of art shipping companies were founded. Now, most cities have several companies doing what we do, which is very specialized. We only handle art. Over the years there have been many attempts to standardize the art industry. None have worked. You can open the phone book and call any kind of shipper. They all say they know how to move art. It's a very difficult landscape for the consumer. Even professionals have a hard time finding the right people and avoiding damages and claims. The recent case of the Goya painting that was stolen on its way from a museum in Ohio to the Guggenheim Museum, and then found, is a good example because that shipper was a very reputable one. It just didn't use best practices in that case.

The representative from AXA Insurance—Payce Louis—mentioned that the company is doing a risk assessment. We're involved with that. As Mr. Louis said, there is a huge concentration of value in storage locations, such as ours. I'm not completely in agreement with some of what AXA is doing, because I think they would like us to state what we have under storage, which, of course, we're not going to do, and that we should allow unfettered access to our place for inspections, and we are discreet about that. We are willing to work with the insurance industry, however, if they want to proceed.

Because underwriters are separated from agents, there is a lot of pressure on the agents to sell coverage. I wish that agents would apply the same stringent set of rules on their collectors that they are trying to enforce on

* Andrew Faintych is Operations Director, Atelier 4, Inc., Fine Art Shipping and Storage.

the shippers. I've been in collectors' homes where art is shoved under the bed; things are in the garage; the collector doesn't know if the work is in Palm Beach or in the Hamptons. Outside of storage, we shippers have the art for such a small fraction of time, I think that the insurance industry would be better served to rein in their collectors. On the first panel, Mr. Louis mentioned the Basel Art Fair in Miami Beach. I think the $3 billion figure he mentioned was low. There was probably several billion dollars worth of art being traded, or at least shown.

What we are seeing, from my perspective, is a lot of new, young collectors. People are diving into the market without the background. They don't understand how insurance works. The analogy between art insurance and a sausage factory is excellent, because when people give me a job to do, they don't want to know how it gets done. They just want to see it get to the other end. In my approximately eighteen years in the business, someone has called maybe once a year with a comment or a question about our bill of lading, which is quite expensive. It is a page of microscopic print stating a million and one ways why we are not responsible for anything that might go wrong. It has to be, or we would not be in business. What's interesting in our industry is that there are different ways of responding to claims. Our reputation is built on not having a claim, but I can't say we don't have problems. That would be false. Especially because of the type of artwork we are dealing with now. With the butterflies, and the human excrement, and the dirt, there is just so much stuff in contemporary artwork, and it really just comes apart. So, we are always trying to combat the bad image that the shippers have. Working more closely with insurance companies is a way to do that. But we are seeing a lot of artwork that is pure concept; it is as if "concept" is *here* and craftsmanship is *there.*

"We have about a dozen [insurance] policies. But all of those policies protect *us*. . . . I am always amazed at the number of people who assume that we automatically cover their work."

The higher the concept, the lower the craftsmanship. We are dealing with work that sometimes just falls apart.

Whenever I meet someone in a social setting and tell them what I do professionally, the first comment is, "Wow. You must carry a lot of insurance." And I say, "Yes. We have about a dozen policies." But all of those policies protect *us.* I can't explain why we don't automatically insure their work. I am always amazed at the number of people who assume that we automatically cover *their* work. Insurance underwriters are aware of this. They'll get the phone call saying, "My god, these guys just ruined my piece!" and "How come they're not going to pay?" That conversation happens way too much. People would be better served if they took the time to understand what the shipping company does, what the conditions of the transport are, and get as much information as they can in advance. Also, get all their documentation. No one ever asks us for things in writing, and it's shocking. They want to give us the values over the phone; they don't know the values; they want me to make up the value; they want our salespeople to make up their loan form. It is quite shocking given the amount of value that is going though our business everyday. There are other points to address, but I will leave them for questions.

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Q & A: PANEL II

AGREEMENTS AND DISAGREEMENTS: STORIES FROM THE FRONT LINES

Q I understand that some insurance companies are considering changing the policy language to incorporate best practices standards. This could limit payments for claims. Would the panel comment on how best practices are enforced or encouraged and, also, how many denials are issued on the basis of normal wear and tear?

A KATJA ZIGERLIG (KZ): It's difficult to come up with a quantitative study regarding wear and tear. If we look at contemporary art, Damien Hirst is a good example, considering the excrement, the dead flies, the dead butterflies. Eva Hesse's polyurethane pieces, which were made in the 1960s, are starting to decay and crack because polyurethane, as we are now finding, deteriorates over time in certain temperatures. Natural wear and tear, like a book yellowing with age, is just the nature of the material and to be expected.

ANDREW FAINTYCH (AF): I find that people don't want to accept wear and tear. They want a claim. Often, in a shipping situation, the first time the recipient sees the artwork is when we deliver it. I might have had the work for five days, but there could have been wear and tear going on for months while it was with the dealer. This becomes an issue for us. Best practices can mean different things. Museums will phone me with a list of questions. Do you have an alarm on your truck? Do you use two men? Do you have a lift gate? Do you have air rides? They also ask questions regarding our warehouse, our hiring practices, background and criminal checking, and so on. There is no standardization in the industry or in the Department of Transportation.

GREGORY SMITH (GS): I can attest that there is no standard for best practices in the shipping industry. I recall a loss where a shipper hired a driver two days before shipping from Florida to New York only to find out the man had a rap sheet eight pages long. He drove as far as Jacksonville before he decided he didn't want to drive the truck anymore. That is amazing when you consider that the ATM cards worked.

The best practices standards in a policy also address using a competent packer and shipper. Generally, museums vet shippers well, but they still make mistakes. In the situation regarding the Goya theft mentioned earlier, the shipper didn't use best practices and left the truck unattended, and, therefore, the loss occurred.

AF: The shipment from Florida just mentioned involved a fairly well-known shipper and a museum shipment that was waylaid. The driver didn't steal the work. He just drove the truck to his girlfriend's house and tried to steal money from the company credit card. The owner of that company hadn't even checked his driving record or his criminal record. My point is there is no format for checking these things. The museum or collector relies on a person's word regarding what a company can do and how things get moved. In the end, it comes down to insurance. In the Florida case, the reward brought forth the work. The insurance company posted a reward, and, magically, the girlfriend called and said where the man was hiding.

GS: Just to be clear, it was the ex-wife who called. The girlfriend was the wife's sister. From a best practices standpoint, insurers often rely on their clients—the museums and collectors—to use common sense in selecting the best person for the job, whether a

"Have you ever inspected the warehouse in which you just put $100 million worth of artwork? The beautiful warehouse in the brochure is probably not the one the item actually goes to."

restorer, a shipper, or a warehouse. Have you ever inspected the warehouse in which you just put $100 million worth of artwork? The beautiful warehouse in the brochure is probably not the one the item actually goes to. We insurers rely on the museums and collectors to do their due diligence before they release their property.

JOHN KOEGEL (JK): Litigating claims cases is not something I like to do, and every one of these things—prompt notice, remediation, competent appraiser—is just a hurdle.

GS: Litigation sometimes occurs, but most claims settle amicably, because the professional insurance companies try to make the right decisions. There are times when things go right.

JK: Yes, but you are not representative.

Q John, are you dealing with more artists who are making claims because of casualties in their studios? Does that change the dynamic?

A JK: Yes, because knowing that an artist might profit by his loss makes him mistrusted. He's accused of making things up. If five years of work goes down the drain and the artist receives full value, he appears to be getting a windfall. Of course, that skews my view, but it also happens with dealers who have losses.

Q What is the value of a condition report in the claims process?

A GS: We need to establish parameters. If, for example, a museum is accepting a piece on loan, I strongly recommend that the museum does a pre-movement condition report before the work comes off the wall. . . . I also recommend that both parties – the owner and the museum – sign off. Then both are starting with the same knowledge. If an artwork has been crated and in storage for ten years before it is delivered to a museum, no one is aware of its condition before transit. I tell clients that before they move an item, they should know what it is and what the condition is. Unfortunately, that is not necessarily a requirement under a policy.

KZ: Without condition reports, you cannot have a subrogation claim. You can't subrogate without the proof . . .

JK: If it is an obligation of the policy, people won't do it, and it will become a reason why they are denied coverage. That is why, from my perspective, it is a bad idea.

Q I was in the art business for many years, and I'm a collector. I've shipped things, stored things, lost things. I've had things damaged. . . . I see no standards in this industry. There have to be some standards set up by a group of professionals.

A AF: The shipping industry on an international level is making attempts to organize itself. . . . But it is very difficult to impose standards on a group of international companies that have different market perspectives and operate under different conditions.

Q Then there's the human factor. I always have an artwork examined before I lend it, but, in addition, my shipping company opens the crate, inspects the item, and gives me a condition report when it arrives at the museum. Although this costs me hundreds of dollars extra, an ordinary person examines it, someone from the warehouse, not a professional. Why?

A AF: It is up to the company and how it trains its employees. Museum registrars, who are highly organized and well-trained, often end up working at art shipping companies and insurance companies.

Q ELLEN HOENER ROSS (EHR): Short of denying claim after claim and teaching clients through experience, how can we create a set of standards and impress upon collectors the importance of observing those standards?

A KZ: Collectors need ongoing education from all areas, for example, from museums and appraisers. It will take everyone working together on education to reach a critical mass. The appraisal industry has professional associations and standards. Yet many collectors hire nonprofessionals who call themselves appraisers.

EHR: Appraisals are very expensive. Collectors often don't want to invest the time and money. They will have an item appraised if they're going to lend it or move it, but if it is sitting in their home, they are not interested in taking this preventive step. It is difficult for an insurer to ask a client to do. Even having a collection reappraised is a constant battle. Each year on renewal we ask, "Are the values correct? Have you had a recent appraisal?"

"How about starting with an insurance policy that's readable? That would be helpful."

JK: How about starting with an insurance policy that's readable? That would be helpful. Insurers claim they are regulated and try to write for so many different things within different states. A policy is an absurd document when you think of how many different riders there are. How could any layperson be expected to understand it? A client asks a broker, "Am I protected?" and the broker writes a letter saying, "Yes, you are," and then, of course, the client finds out otherwise.

AMY GOLDRICH: We have come full circle. Perhaps this is a good place to end. I'd like to thank the speakers and thank all of you for coming.

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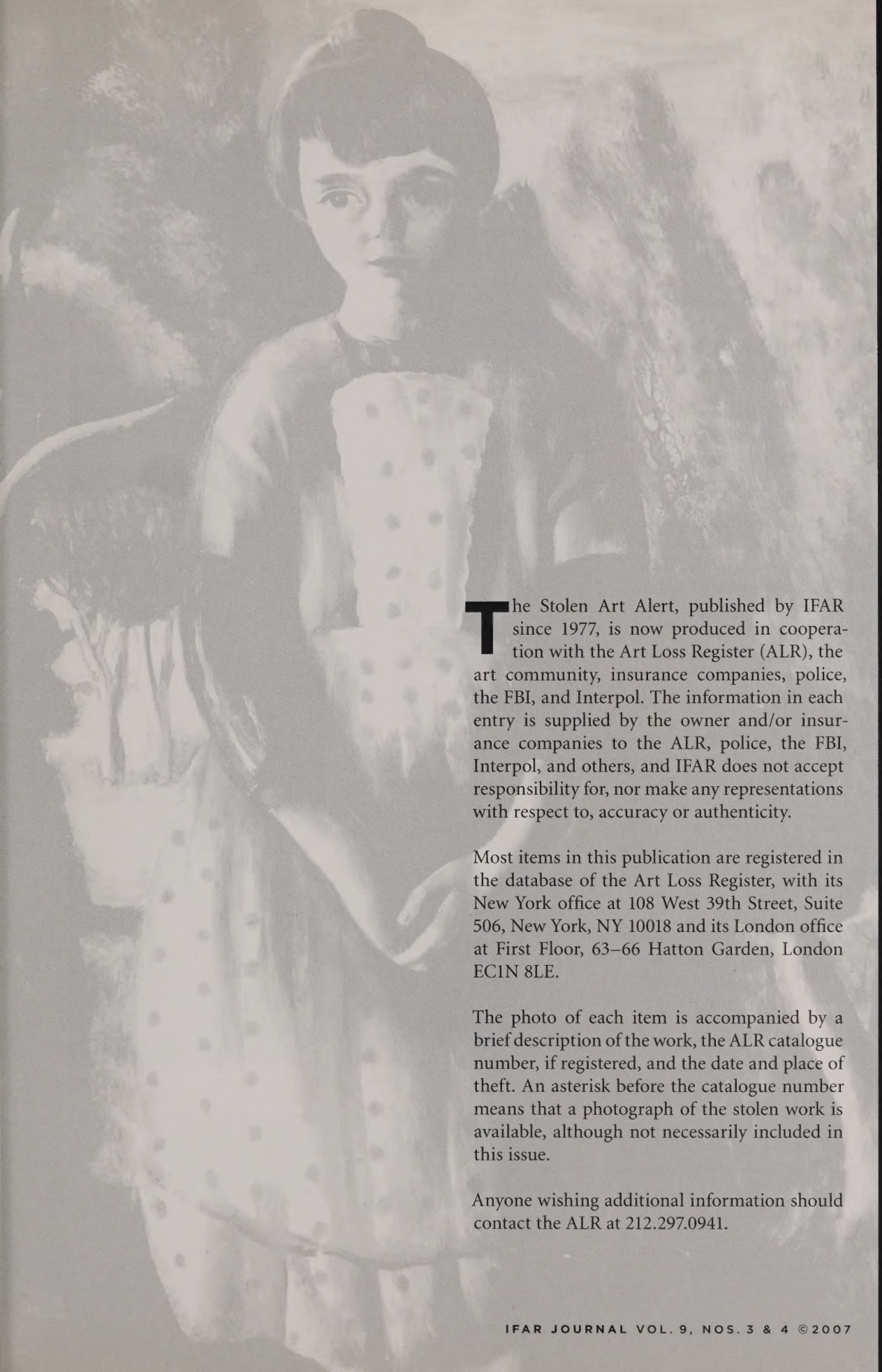

STOLEN ART ALERT

The Stolen Art Alert, published by IFAR since 1977, is now produced in cooperation with the Art Loss Register (ALR), the art community, insurance companies, police, the FBI, and Interpol. The information in each entry is supplied by the owner and/or insurance companies to the ALR, police, the FBI, Interpol, and others, and IFAR does not accept responsibility for, nor make any representations with respect to, accuracy or authenticity.

Most items in this publication are registered in the database of the Art Loss Register, with its New York office at 108 West 39th Street, Suite 506, New York, NY 10018 and its London office at First Floor, 63–66 Hatton Garden, London EC1N 8LE.

The photo of each item is accompanied by a brief description of the work, the ALR catalogue number, if registered, and the date and place of theft. An asterisk before the catalogue number means that a photograph of the stolen work is available, although not necessarily included in this issue.

Anyone wishing additional information should contact the ALR at 212.297.0941.

STOLEN ART*

PAINTINGS

163. PABLO PICASSO (Spanish, 1881-1973). ***L'Ecritoire.*** See color photo on inside back cover.

164. FRANS VAN MIERIS, THE ELDER (Dutch, 17th century). ***A Cavalier, or Self-portrait as an Officer,*** c.1657-59. See color photo on inside back cover.

165. UNATTRIBUTED. ***Saint Anthony*** (Spanish, Cuzco School), c.1700. See color photo on inside back cover.

The following two paintings by L.S. LOWRY *(English, 1887-1976) were stolen, along with item nos. 181-183 and 209, from a private residence in Cheshire, England on May 3, 2007. *L07.199:*

166. ***The Viaduct,*** 1954. Oil on canvas. 60.95 x 91.45 cm. Signed l/r.

167. ***Tanker Entering the Tyne,*** 1967. Oil on canvas, 50.8 x 76.2 cm. Signed l/l.

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*The following two paintings were stolen, along with item no. 180, from a gallery in West Palm Beach, FL on February 20, 2007. *N07.097:*

168. WILLIAM GLACKENS (American, 1870-1938). ***A Lane in the South of France,*** c.1922. Oil on paper. 9" x 7". Signed l/r and stamped verso.

169. JANE PETERSON (American, 1876-1965). ***A Side Canal in Venice,*** c.1900. Oil on board. 6 1/4" x 9 1/2". Signed l/r and verso.

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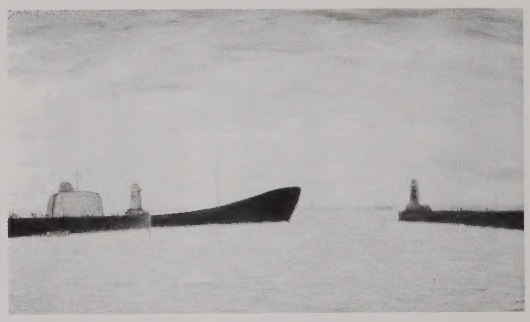

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ERRATUM: On page 40 of the last issue (Vol. 9, no. 2) of *IFAR Journal*, in the caption for stolen item 74 *(St. Patrick's)*, the artist was incorrectly listed as GUY CARLETON HIGGINS. The correct name is GUY CARLETON WIGGINS.

* Numbering for the year 2007 Cumulative Index of Stolen Art began with *IFAR Journal*, Vol. 9, no. 1.

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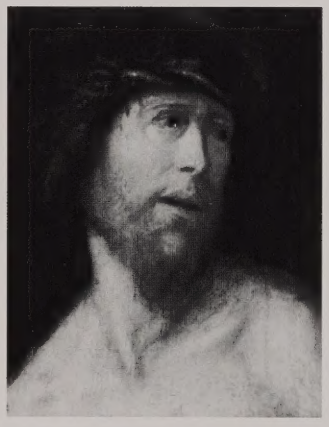

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The following paintings were stolen from a residence in Godstone, Surrey, England during a burglary by five men wearing balaclavas on May 31, 2007.

170. **GEORGE WHITE** (English, c.1684-1732). ***Shooting Party.*** Oil on canvas. 52 x 68 cm.

171. **SIR GODFREY KNELLER** (German/English, 1646-1723). ***Portrait of Sarah, Duchess of Marlborough.*** Oil on canvas. 75 x 62 cm.

172. **GEORGE KNAPTON** (English, 1698, 1778). ***Portrait of a Boy Archer.*** Oil on canvas. 60 x 50 cm.

The following four paintings were stolen from a museum in Novi Sad, Serbia and Montenegro on January 8, 2006. Interpol no. 2006/1461.

173. **PIER FRANCESCO MOLA** (Italian, 1612-1666). ***Night Landscape with a Fisherman.*** Oil on canvas. 49 x 38 cm. Inventory no. P28.

174. **REMBRANDT VAN RIJN** (Dutch, 1606-1669). ***Portrait of Rembrandt's Father.*** Oil on canvas. 28 x 22 cm. Inventory no. P26.

175. **PETER PAUL RUBENS** (Flemish, 1577-1640). ***Seneca.*** See color photo on inside back cover.

176. **UNATTRIBUTED.** (Netherlands or Germany, 16th century). ***Christ's Head.*** Oil on panel. 30 x 22 cm. Inventory no. P79.

MIXED MEDIA

177. **ROBERT RAUSCHENBERG** (American. b.1925). ***Colorado (Urban Bourbon Series)***, 1989. See color photo on inside back cover.

STOLEN ART

WORKS ON PAPER

178. **PABLO PICASSO** (Spanish, 1881-1973). ***Corrida***, 1920. Signed l/l. Pencil on paper. 22.5 x 31.8 cm. Stolen from the residence of a Russian diplomat near Vienna, Austria in June 2007. Interpol no. 2007/30874-2.1.

179. **REMBRANDT VAN RIJN** (Dutch, 1606-1669). ***Adam and Eve***, 1638. 9" x 6". Framed: 16" x 14". Stolen from Hilligoss Galleries in Chicago on May 20, 2007.

180. **WILLIAM GLACKENS** (American, 1870-1938). ***The Amusement Park***, c.1920. Pastel on paper, 10 ½" x 13 ¼". *N07.097. Stolen from a gallery in West Palm Beach, FL on February 20, 2007 along with items nos. 168 & 169.

The following drawings on paper by **L.S. LOWRY** *(English, 1887-1976) were stolen from a private residence in Cheshire, England on May 3, 2007 along with item nos. 166, 167, and 209. *L07.199:*

181. ***The Bridge at Ringley***, 1926. Pencil. 35.55 x 25.4 cm. Signed and dated l/l.

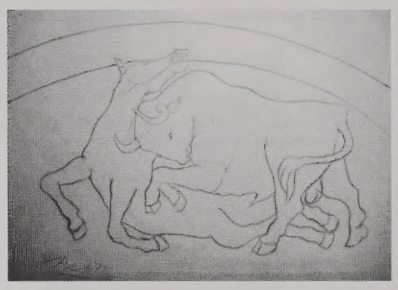
182. ***The Street Market***, 1924. Pencil. 40.65 x 27.95 cm. (Photo not shown.)

183. ***The Surgery***, c.1960-69. Pencil. 35.55 x 25.4 cm. Signed and dated l/r.

The following two works by **YOSHITOMO NARA** *(Japanese, b.1959) were stolen from a gallery in Berlin, Germany on March 3, 2007. *L07.146:*

184. ***A Knocked Down, Dragged Out Fight***, 2007. Colored pencil on paper. 21 x 26 cm.

185. ***Untitled***, 2007. Colored pencil on paper. 33.20 x 25.5 cm.



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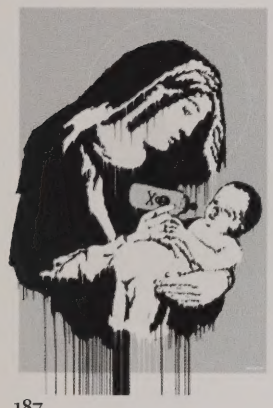

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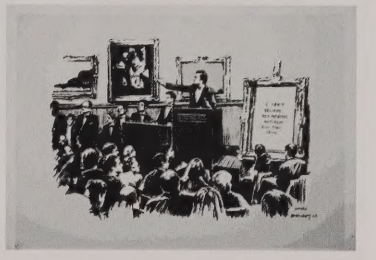

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*The following limited edition screenprints—the first five by Banksy (English, contemporary) and the sixth by Scrawl Collective—RYCA—were stolen from a gallery in Brighton, England sometime between May 20 and May 24, 2007. *L07.279 and *L07.280:*

186. *Gangsta Rat.*

187. *Virgin Mary.*

188. *Napalm.*

189. *Jack & Jill.*

190. *Morons.*

191. *Reservoir Troopers.* Screenprint. 70 x 50 cm.

STOLEN ART

SCULPTURE

192. LOUISE MCCAGG (American, contemporary). ***Striding Figure***, c.1977. Cast aluminum. *N07.112. Stolen from a museum in New London, CT on December 1, 2006.

193. FORREST MYERS (American, b.1941). ***Quark***, c.1988. Anodized aluminum. 13" x 17" x 16 ½". Signed twice and dated on applied metal plaque: FM 88. *N07.133. Stolen from a New York gallery on April 30, 2007.

194. UNATTRIBUTED. ***Saint Sebastian***, c.1800 (Mexican). Wood, gesso, and pigment. 34" x 11" x 9". *N07.121. Stolen in Los Angeles, CA on April 28, 2007.

195. CARLA MOLKENBOER, ROELAND VAN DE WALL REPELAER & GEERT COLPAERT (Dutch, contemporary). ***Talking Stones***, c. 2006. Bronze. 85 x 60 x 50 cm. *L07.217. Stolen from a private garden in Amsterdam, The Netherlands on April 17, 2007.

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*The following two items (British, 20th century) were stolen from a private residence in Berkshire, England on April 2, 2007. *L07.176:*

196. ***Putti Garden Sculpture.*** Lead. Ht. 86 cm.

197. ***Putti Fountain Finial.*** Lead. Ht. 69 cm.

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*The following items by Antonius Hoeckelmann (German, 1937-2000) were stolen from a gallery in Berlin, Germany on April 30, 2007. *L07.201:*

198. ***Untitled***, c.1964-66. Bronze. 62 x 55 x 42 cm. Ed. no. JWAH 4/P5.

199. ***Olinroggin***, c. 1963-64. Bronze. 58 x 144 x 45 cm. Ed. no. JWAH 4/P5.

200. ***Zweifinger***, c.1961-63. Bronze. 121 x 60 x 37. Ed. no. JWAH/P 2P1.

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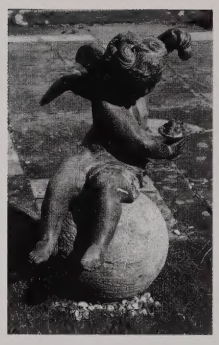
*The following two sculptures by Salvador Dalí (Spanish, 1904-1989) were stolen from a private residence on the West Coast on December 23, 2006. *N07.044:*

201. ***Hysterical Venus***, c.1983. Glass, pâte de verre. 14" x 7" x 5". Dali Ed. no. 61/300.

202. ***Alice in Wonderland***, c.1977-84. Bronze. 35" x 17 ½" x 8". Ed. no. 53/350.

195



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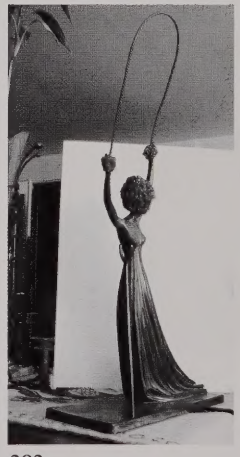

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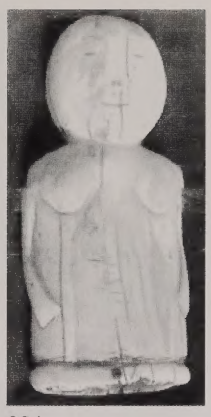

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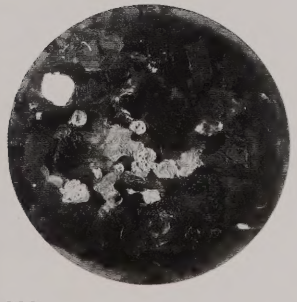

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STOLEN ART

ASIAN ART

203. ***Indonesian Head*** (16th century). Stone. Approx. ht: 36". *N06.204. Stolen from a private residence in South Orange, NJ on October 30, 2006.

NATIVE AMERICAN ART

204. ***Bust*** (Alaskan Eskimo, 18th century). Whale tooth ivory. 6" x 3 ½" x 1 ½". *N07.003. Stolen from a private residence in Southern California on November 11, 2006.

DECORATIVE ARTS

GLASS

205. RENE LALIQUE (French, 21st century). ***Large Nude Venus.*** Glass. Black. Ed. No. 42/99. *N07.027. Stolen from a gallery in Chicago, IL on December 9, 2006.

206. TIFFANY STUDIOS (American, 20th century). ***Madonna and Child,*** c.1900. Leaded glass window. 76" x 35 ½" x 2". *N07.139. Stolen from a private residence in Akron, OH on April 10, 2007.

LITURGICAL ITEM

207. ***Monstrance,*** c.1875 (Italian). Silver, gold and enamel. 35 ⅛" x 11 ¾" x 11 ¾". *N07.121. Stolen in Los Angeles, CA on April 28, 2007.

MISCELLANEOUS ITEMS

208. ***Beaker*** (Dutch or English, 17th-18th centuries). Pewter. 6 ¾" x 6 ¼". Bottom stamped "PQ" and engraved "7026." *N07.084. Stolen from a museum in Pennsylvania on April 10, 2007.

209. L. S. LOWRY (English, 1887-1976). ***Artist's palette.*** *L07.199. Stolen from a private residence in Cheshire, England on May 3, 2007 along with item nos. 166, 167, 181-183.

STOLEN ART

ANTIQUITIES

The following five items were among numerous gold objects reported stolen from the Sarmizegetusa archaeological site in the Orastie Mountains in Romania in early October 2006. Interpol no. 20061017914.

210. ***Spiral Bracelet.*** Gold. In the au repoussé technique. Looted on May 27, 2001.

211. ***"Torque" Collar Necklace.*** Silvertone metal. Diam: 19.5 cm. Looted in 2002.

212. ***Roman Dinars.*** Silver. Photo shows both sides of just one of 12,000 such coins looted in 2004.

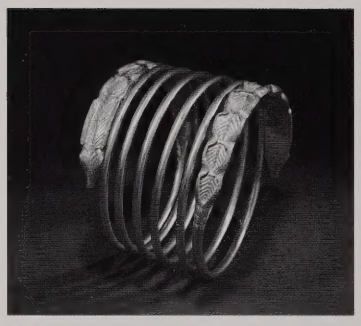
213. ***Koson Coin.*** Gold. Photo shows both sides of just one of 2,440 such coins looted in August 1996.

214. ***Lysimach Coin.*** Gold. Photo shows both sides of just one of 2,700 such coins looted in 1999.

215. ***"27-Pendant" Collar Necklace with Earrings.*** Gold. Looted from the Capalna archaeological site in the Sebes Mountains in 2003. Interpol no. 20061017914.

216. ***Candle Scissor.*** Gold. Stolen from a collection in Istanbul, Turkey in early 2006. Interpol Ankara no. 154988 150906.

217. ***Border Tile.*** 14 x 25 cm. Stolen from Rustem Pasa Mosque, Eminonu, Istanbul, Turkey on July 5, 2006. Interpol Ankara no. 152722 120906.



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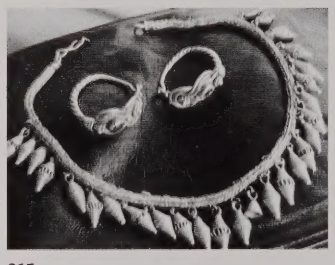

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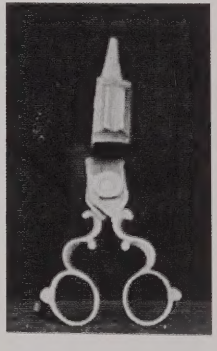

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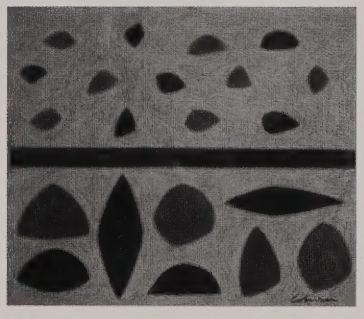


20

MISSING ART*

PAINTINGS

15. THEO TOBIASSE (Israeli/French, b.1927). ***Jerusalem Jardin des Lumières***, 1970. Mixed media on canvas. 21 ¼" x 25 ½". *N07.068. Reported missing from a private residence in Israel on March 10, 2002.

16. DANA BAIRD (American, contemporary). ***Solar Dance***, 2002. Oil on panel. 24" x 35". *N07.104. Reported missing from a private residence in Minneapolis, MN on April 21, 2007.

17. MOISE KISLING (Polish/French, 1891-1953). ***Portrait de Jeune Provençal***, c.1928. 36" x 25 ½". *N07.081. Reported missing from a gallery in New York in 1999.

18. KATHARINE KAVANAUGH CAHILL (American, 1884-1962). ***Ladies at Luncheon***, c.1940. Oil on canvas. 60" x 48". *N07.150. Reported missing from a private residence in Southern California on June 24, 2005.

19. GUO JIAN (Chinese, b.1962). ***The Day Before I Went Away***, 2003. Oil on linen. 152 x 213 x 4 cm. Signed verso. *L07.261. Reported missing in transit between Spain and China on May 27, 2007.

WORKS ON PAPER

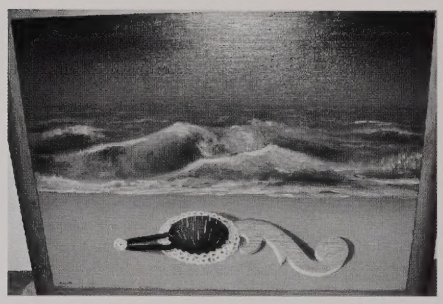
20. JOHN COBURN (1925-2006). ***Study for Yellow Landscape***, 2001. Watercolor and pastel. 35 x 40 cm. Signed l/r: Coburn. *N07.191. Reported missing from a gallery in Double Bay, Australia on April 3, 2007.

* Numbering for the year 2007 Cumulative Index of Missing Art began with *IFAR Journal*, Vol. 9, no. 1.

RECOVERED ART

PAINTINGS

20. **RENÉ MAGRITTE** (French, 1898-1967). ***Les Reflets du Temps.*** Oil on canvas. 74 x 98 cm. *L07.100. Reported missing from storage in London sometime between July and August 2006. Recovered on June 21, 2007 after someone contacted the London Metropolitan Police.



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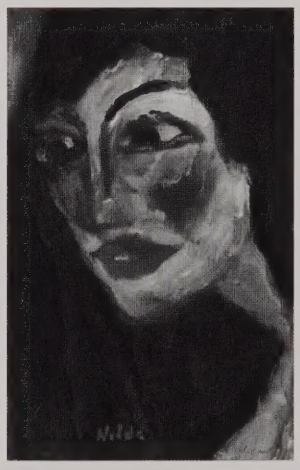
21. **GIANDOMENICO TIEPOLO** (Italian, 1727-1804). ***Carnival Scene,*** 1765. Oil on canvas. 89 x 110 cm. Stolen from a private collector in 2006. Recovered by the Carabinieri in early June 2007 in Pordenone, near Venice, Italy along with more than a dozen other works of art after police raids on markets across Italy.

21

22. **EMIL NOLDE** (German, 1867-1956). ***Nadja,*** 1919. Oil on canvas. *N180.186. Stolen from a storage depot in the late 1970s. Found in an attic by an art collector after the death of his daughter, who probably played a part in the theft. Identified by the ALR as stolen.



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23. **LEONARDO DA VINCI OR WORKSHOP** (Italian, 1452–1519). ***Madonna with Yarnwinder,*** c.1501–1508. Oil on panel. 18 ¼" x 14". *L03.931. Stolen from Drumlanrig Castle, Thornhill, Scotland on August 27, 2003. Recovered by the Scottish police in Glasgow on October 4, 2007. See story on p. 10.

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* Numbering for the year 2007 Cumulative Index of Recovered Art began with *IFAR Journal,* Vol. 9, no. 1.

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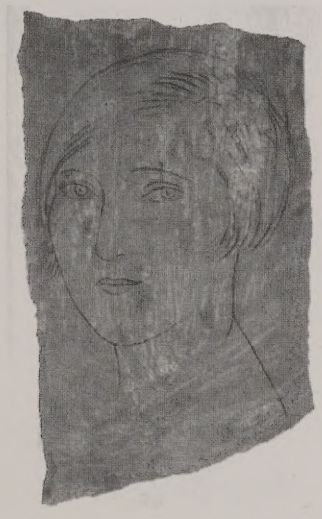

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RECOVERED ART

PAINTINGS

The following two works by **PABLO PICASSO** *(Spanish, 1881–1973), *L07.112, stolen in Paris, France on February 26–27, 2007, were recovered in August. See story on p. 8 of this issue. See also item no. 27 below.*

24. ***Portrait of Jacqueline.*** Oil on canvas. Dated u/r: February 11, 1961. (Zervos XIX: 425).

25. ***Maya with a Doll.*** Oil on canvas. 73 x 60 cm. Dated l/r: Jan. 22, 1938. (Zervos IX: 101). (See photo on p. 8.)

MIXED MEDIA

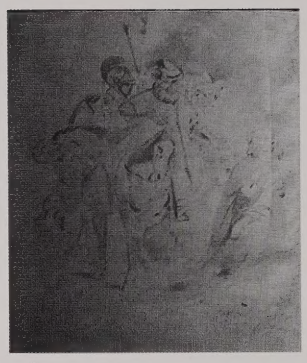
26. **PABLO PICASSO** (Spanish, 1881–1973). ***Marie Thérèse at 21.*** Lead pencil drawing and collage on paper. 19" x 12". *L07.112, stolen in Paris, France on February 26-27, 2007. Recovered in August. See story on p. 8 of this issue. See also item nos. 24 and 25 above.

27. **ANDY WARHOL** (American, 1928-1987). ***30 Colored Maos (Reversal Series).*** Acrylic and silkscreen ink on canvas. 108 x 96 cm. Stolen in 1980 while on exhibit in Paris. *L04.076. Recovered by the ALR in early 2007 after it was brought into Sotheby's London for appraisal in November 2006. Consigned to Sotheby's by the ALR on behalf of insurers and sold on June 21, 2007.

RECOVERED ART

WORKS ON PAPER

28. EUGÈNE DELACROIX (French, 1798–1863). *Entry of the Crusaders into Constantinople, c.*1839-40. Sepia wash. 9" x 10". Stolen from the DeLind Gallery of Fine Art, Milwaukee, WI on July 21, 2005. (*IFAR Journal*, Vol. 8, no. 1, item no. 19.) Recovered on June 8, 2007 after a stranger delivered it during the opening reception of an Impressionist show at the gallery.



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ASIAN ART

29. *Magic Fox Netsuke* (Japanese, 18th century). Ivory. Ht: 12.1 cm. *L04.1100. Stolen from a museum in the UK on March 17, 1999. Identified as stolen in December 2005 by the ALR Cologne office at a German auction sale. Returned to the museum in June 2007.

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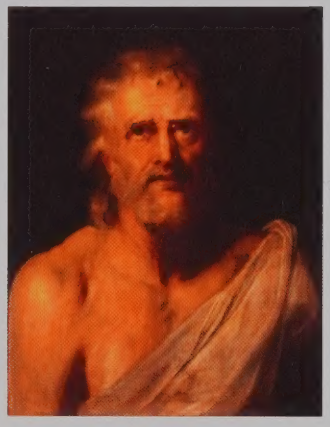

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163. **PABLO PICASSO** (Spanish, 1881-1973). *L'Ecritoire.* Oil on canvas. Signed verso. 33 x 46 cm. Stolen from an art gallery in Monaco on September 14, 2006. Interpol no. 2006/42575.

164. **FRANS VAN MIERIS, THE ELDER** (Dutch, 17th century). ***A Cavalier, or Self-portrait as an Officer*** (detail shown), c.1657-59. Oil on oak panel, 20 x 16 cm. *N07.142. Stolen from the Art Gallery of New South Wales in Sydney, Australia on June 10, 2007.

165. **UNATTRIBUTED.** ***Saint Anthony*** (Spanish, Cuzco School), c.1700. Oil on canvas, 40" x 30". *N07.121. Stolen in Los Angeles, CA on April 28, 2007.

175. **PETER PAUL RUBENS** (Flemish, 1577-1640) ***Seneca.*** Oil on panel, 63 x 49 cm. Inventory no. P20. Stolen from a museum in Novi Sad, Serbia and Montenegro on January 8, 2006. See also, item nos. 173, 174, 176.

177. **ROBERT RAUSCHENBERG** (American. b.1925). ***Colorado (Urban Bourbon Series),*** 1989. Acrylic and enamel on enameled aluminum, 123.8 x 123.8 cm. Signed. Ed. no. 89.074. *L07.284. Stolen in transit between Stockholm and London on May 30, 2007.

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